code of federal regulations

Education

34

PARTS 300 TO 399

Revised as of July 1, 1986

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Education

34

PARTS 300 to 399

Revised as of July 1, 1986

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Cite this Code **CFR**

thus: **34 CFR 300.1**

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The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

July 1, 1986.

THIS TITLE

Title 34—EDUCATION is presently composed of three volumes (Parts 1 to 299, Parts 300 to 399, and Part 400 to End). The contents of these volumes represent all regulations codified under this title of the CFR as of July 1, 1986.

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For this volume Mildred L. Isler was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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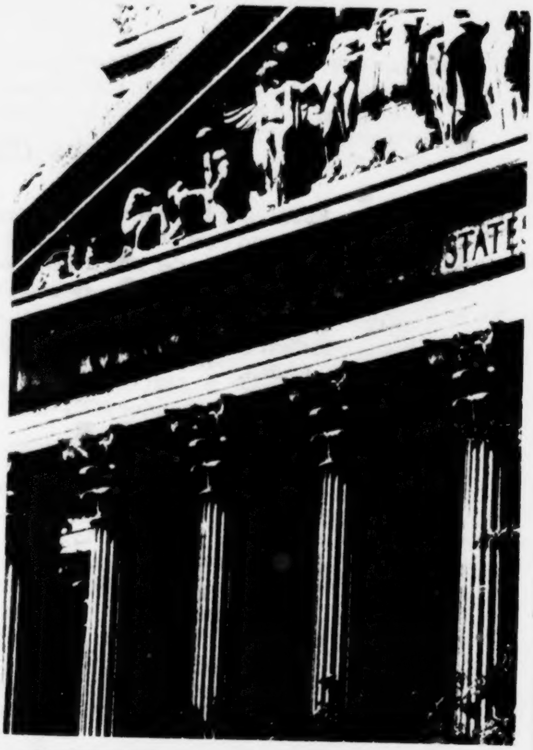

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Title 34—Education

(This book contains Parts 300 to 399)

EDITORIAL NOTE: Title 34—Education was established at 45 FR 30803, May 9, 1980. Nomenclature changes affecting Chapter III appear at 45 FR 86301, Dec. 30, 1980.

Part

SUBTITLE B—REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION: (CONTINUED)

Chapter III—Office of Special Education and Rehabilitative Services, Department of Education 300

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APPENDIX B—INDEX TO PART 300
APPENDIX C—NOTICE OF INTERPRETATION

AUTHORITY: 20 U.S.C. 1411-1420, unless otherwise noted.

SOURCE: 42 FR 42476, Aug. 23, 1977, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

PURPOSE, APPLICABILITY, AND GENERAL PROVISIONS REGULATIONS

§ 300.1 Purpose.

The purpose of this part is:

(a) To insure that all handicapped children have available to them a free appropriate public education which includes special education and related services to meet their unique needs,

(b) To insure that the rights of handicapped children and their parents are protected,

(c) To assist States and localities to provide for the education of all handicapped children, and

(d) To assess and insure the effectiveness of efforts to educate those children.

(Authority: 20 U.S.C. 1401 Note)

§ 300.2 Applicability to State, local, and private agencies.

(a) *States.* This part applies to each State which receives payments under Part B of the Education of the Handicapped Act.

(b) *Public agencies within the State.* The annual program plan is submitted by the State educational agency on behalf of the State as a whole. Therefore, the provisions of this part apply to all political subdivisions of the State that are involved in the education of handicapped children. These would include:

(1) The State educational agency, (2) local educational agencies and intermediate educational units, (3) other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for the deaf or blind), and (4) State correctional facilities.

(c) *Private schools and facilities.* Each public agency in the State is responsible for insuring that the rights and protections under this part are given to children referred to or placed in private schools and facilities by that public agency.

(See §§ 300.400-300.403)

(Authority: 20 U.S.C. 1412(1), (6); 1413(a); 1413(a)(4)(B))

Comment. The requirements of this part are binding on each public agency that has direct or delegated authority to provide special education and related services in a State that receives funds under Part B of the Act, regardless of whether that agency is receiving funds under Part B.

§ 300.3 Regulations that apply to assistance to States for education of handicapped children.

(a) *Regulations.* The following regulations apply to this program of Assistance to States for Education of Handicapped Children.

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs) and Part 77 (Definitions).

(2) The regulations in this Part 300.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(Authority: 20 U.S.C. 1221e-3(a)(1))

DEFINITIONS

Comment. Definitions of terms that are used throughout these regulations are included in this subpart. Other terms are defined in the specific subparts in which they are used. Below is a list of those terms and the specific sections and subparts in which they are defined:

Consent (§ 300.500 of Subpart E)
Destruction (§ 300.560 of Subpart E)
Direct services (§ 300.370(b)(1) of Subpart C)
Evaluation (§ 300.500 of Subpart E)

First priority children (§ 300.320(a) of Subpart C)
Independent educational evaluation (§ 300.503 of Subpart E)
Individualized education program (§ 300.340 of Subpart C)
Participating agency (§ 300.560 of Subpart E)
Personally identifiable (§ 300.500 of Subpart E)
Private school handicapped children (§ 300.450 of Subpart D)
Public expense (§ 300.503 of Subpart E)
Second priority children (§ 300.320(b) of Subpart C)
Special definition of "State" (§ 300.700 of Subpart G)
Support services (§ 300.370(b)(2) of Subpart C)

[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.4 Free appropriate public education.

As used in this part, the term "free appropriate public education" means special education and related services which:

(a) Are provided at public expense, under public supervision and direction, and without charge.

(b) Meet the standards of the State educational agency, including the requirements of this part,

(c) Include preschool, elementary school, or secondary school education in the State involved, and

(d) Are provided in conformity with an individualized education program which meets the requirements under §§ 300.340-300.349 of Subpart C.

(Authority: 20 U.S.C. 1401(18))

§ 300.5 Handicapped children.

(a) As used in this part, the term "handicapped children" means those children evaluated in accordance with §§ 300.530-300.534 as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and related services.

(b) The terms used in this definition are defined as follows:

(1) "Deaf" means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

(2) "Deaf-blind" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.

(3) "Hard of Hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of "deaf" in this section.

(4) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(5) "Multihandicapped" means concomitant impairments (such as mentally retarded—blind, mentally retarded-orthopedically impaired, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.

(6) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g. poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

(7) "Other health impaired" means (i) having an autistic condition which is manifested by severe communication and other developmental and educational problems; or (ii) having limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rhematic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabe-

tes, which adversely affects a child's educational performance.

(8) "Seriously emotionally disturbed" is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

(A) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(C) Inappropriate types of behavior or feelings under normal circumstances;

(D) A general pervasive mood of unhappiness or depression; or

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes children who are schizophrenic. The term does not include children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.

(9) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation of emotional disturbance or of environmental, cultural, or economic disadvantage.

(10) "Speech impaired" means a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

(11) "Visually handicapped" means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

(Authority: 20 U.S.C. 1401(1), (15))

[42 FR 42476, Aug. 23, 1977, as amended at 42 FR 65083, Dec. 29, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980, and further amended at 46 FR 3866, Jan. 16, 1981]

§ 300.6 Include.

As used in this part, the term "include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

(Authority: 20 U.S.C. 1417(b))

§ 300.7 Intermediate educational unit.

As used in this part, the term "intermediate educational unit" means any public authority, other than a local educational agency, which:

(a) Is under the general supervision of a State educational agency;

(b) Is established by State law for the purpose of providing free public education on a regional basis; and

(c) Provides special education and related services to handicapped children within that State.

(Authority: 20 U.S.C. 1401 (22))

§ 300.8 Local educational agency.

(a) [Reserved]

(b) For the purposes of this part, the term "local educational agency" also includes intermediate educational units.

(Authority: 20 U.S.C. 1401 (8))

[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.9 Native language.

As used in this part, the term "native language" has the meaning given that term by section 703(a)(2) of the Bilingual Education Act, which provides as follows:

> The term "native language", when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child.

(Authority: 20 U.S.C. 880b-1(a)(2); 1401(21))

Comment. Section 602(21) of the Education of the Handicapped Act states that the term "native language" has the same meaning as the definition from the Bilingual Education Act. (The term is used in the prior notice and evaluation sections under § 300.505(b)(2) and § 300.532(a)(1) of Subpart E.) In using the term, the Act does not prevent the following means of communication:

(1) In all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.

(2) If a person is deaf or blind, or has no written language, the mode of communication would be that normally used by the person (such as sign language, braille, or oral communication).

§ 300.10 Parent.

As used in this part, the term "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with § 300.514. The term does not include the State if the child is a ward of the State.

(Authority: 20 U.S.C. 1415)

Comment. The term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

§ 300.11 Public agency.

As used in this part, the term "public agency" includes the State educational agency, local educational agencies, intermediate educational units, and any other political subdivision of the State which are responsible for providing education to handicapped children.

(Authority: 20 U.S.C. 1412(2)(B); 1412(6); 1413(a))

§ 300.12 Qualified.

As used in this part, the term "qualified" means that a person has met State educational agency approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services.

(Authority: 20 U.S.C. 1417(b))

§ 300.13 Related services.

(a) As used in this part, the term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(b) The terms used in this definition are defined as follows:

(1) "Audiology" includes:

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lipreading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

(vi) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) "Early identification" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) "Medical services" means services provided by a licensed physician to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

(5) "Occupational therapy" includes:

(i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;

(ii) Improving ability to perform tasks for independent functioning when functions are impaired or lost; and

(iii) Preventing, through early intervention, initial or further impairment or loss of function.

(6) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(7) "Physical therapy" means services provided by a qualified physical therapist.

(8) "Psychological services" include:

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning.

(iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents.

(9) "Recreation" includes:

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(10) "School health services" means services provided by a qualified school nurse or other qualified person.

(11) "Social work services in schools" include:

(i) Preparing a social or developmental history on a handicapped child;

(ii) Group and individual counseling with the child and family;

(iii) Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and

(iv) Mobilizing school and community resources to enable the child to receive maximum benefit from his or her educational program.

(12) "Speech pathology" includes:

(i) Identification of children with speech or language disorders;

(ii) Diagnosis and appraisal of specific speech or languge disorders;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language disorders;

(iv) Provisions of speech and language services for the habilitation or prevention of communicative disorders; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language disorders.

(13) "Transportation" includes:

(i) Travel to and from school and between schools,

(ii) Travel in and around school buildings, and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a handicapped child.

(Authority: 20 U.S.C. 1401 (17))

Comment. With respect to related services, the Senate Report states:

> The Committee bill provides a definition of "related services," making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of handicapping conditions and the provision of services to minimize the effects of such conditions.

(Senate Report No. 94-168, p. 12 (1975))

The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music, and dance therapy), if they are required to assist a handicapped child to benefit from special education.

There are certain kinds of services which might be provided by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual States. For example, counseling services might be provided by social workers, psychologists, or guidance counselors; and psychological testing might be done by qualified psychological examiners, psychometrists, or psychologists, depending upon State standards.

Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation.

§ 300.14 Special education.

(a) (1) As used in this part, the term "special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(2) The term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child, and is considered "special education" rather than a "related service" under State standards.

(3) The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child.

(b) The terms in this definition are defined as follows:

(1) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to non-handicapped students or their parents as a part of the regular education program.

(2) "Physical education" is defined as follows:

(i) The term means the development of:

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

(ii) The term includes special physical education, adapted physical education, movement education, and motor development.

(Authority: 20 U.S.C. 1401 (16))

(3) "Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

(Authority: 20 U.S.C. 1401 (16))

Comment. (1) The definition of "special education" is a particularly important one under these regulations, since a child is not handicapped unless he or she needs special education. (See the definition of "handicapped children" in § 300.5.) The definition of "related services" (§ 300.13) also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no "related services," and the child (because not "handicapped") is not covered under the Act.

(2) The above definition of vocational education is taken from the Vocational Education Act of 1963, as amended by Pub. L. 94-482. Under that Act, "vocational education" includes industrial arts and consumer and homemaking education programs.

Subpart B—State Annual Program Plans and Local Applications

ANNUAL PROGRAM PLANS—GENERAL

§ 300.110 Condition of assistance.

In order to receive funds under Part B of the Act for any fiscal year, a State must submit an annual program plan to the Secretary through its State educational agency.

(Authority: 20 U.S.C. 1232c(b), 1412, 1413)

§ 300.111 Contents of plan.

Each annual program plan must contain the provisions required in this subpart.

(Authority: 20 U.S.C. 1412, 1413, 1232c(b))

ANNUAL PROGRAM PLANS—CONTENTS

§ 300.121 Right to a free appropriate public education.

(a) Each annual program plan must include information which shows that the State has in effect a policy which insures that all handicapped children have the right to a free appropriate public education within the age ranges and timelines under § 300.122.

(b) The information must include a copy of each State statute, court order, State Attorney General opinion, and other State document that shows the source of the policy.

(c) The information must show that the policy:

(1) Applies to all public agencies in the State;

(2) Applies to all handicapped children;

(3) Implements the priorities established under § 300.127(a)(1) of this subpart; and

(4) Establishes timeliness for implementing the policy, in accordance with § 300.122.

(Authority: 20 U.S.C. 1412(1)(2)(B), (6); 1413(a)(3))

§ 300.122 Timeliness and ages for free appropriate public education.

(a) *General.* Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to insure that a free appropriate public education is available for all handicapped children aged three through eighteen within the State not later than September 1, 1978, and for all handicapped children aged three through twenty-one within the State not later than September 1, 1980.

(b) *Documents relating to timeliness.* Each annual program plan must include a copy of each statute, court order, attorney general decision, an other State document which demonstrates that the State has established timelines in accordance with paragraph (a) of this secton.

(c) *Exception.* The requirement in paragraph (a) of this section does not apply to a State with respect to handicapped children aged three, four, five, eighteen, nineteen, twenty, or twenty-one to the extent that the requirement would be inconsistent with State law or practice, or the order of any court, respecting public education for one or more of those age groups in the State.

(d) *Documents relating to exceptions.* Each annual program plan must:

(1) Describe in detail the extent to which the exception in paragraph (c) of this section applies to the State, and

(2) Include a copy of each State law, court order, and other document which provides a basis for the exception.

(Authority: 20 U.S.C. 1412(2)(B))

§ 300.123 Full educational opportunity goal.

Each annual program plan must include in detail the policies and procedures which the State will undertake, or has undertaken, in order to insure that the State has a goal of providing full educational opportunity to all handicapped children aged birth through twenty-one.

(Authority: 20 U.S.C. 1412(2)(A))

§ 300.124 Full educational opportunity goal—data requirement.

Beginning with school year 1978-1979, each annual program plan must contain the following information:

(a) The estimated number of handicapped children who need special education and related services.

(b) For the current school year:

(1) The number of handicapped children aged birth through two, who are receiving special education and related services; and

(2) The number of handicapped children:

(i) Who are receiving a free appropriate public education,

(ii) Who need, but are not receiving a free appropriate public education,

(iii) Who are enrolled in public private institutions who are receiving a free appropriate public education, and

(iv) Who are enrolled in public and private institutions and are not receiving a free appropriate public education.

(c) The estimated numbers of handicapped children who are expected to receive special education and related services during the next school year.

(d) A description of the basis used to determine the data required under this section.

(e) The data required by paragraphs (a), (b), and (c) of this section must be provided:

(1) For each disability category (except for children aged birth through two), and

(2) For each of the following age ranges: birth through two, three through five, six through seventeen, and eighteen through twenty-one.

(Authority: 20 U.S.C. 1412(2)(A))

Comment. In Part B of the Act, the term "disability" is used interchangeably with "handicapping condition". For consistency in this regulation, a child with a "disability" means a child with one of the impairments listed in the definition of "handicapped children" in § 300.5, if the child needs special education because of the impairment. In essence, there is a continuum of impairments. When an impairment is of such a nature that the child needs special education, it is referred to as a disability, in these regulations, and the child is a "handicapped" child.

States should note that data required under this section are not to be transmitted to the Secretary in personally identifiable form. Generally, except for such purposes as monitoring and auditing, neither the States nor the Federal Government should have to collect data under this part in personally identifiable form.

§ 300.125 Full educational opportunity goal—timetable.

(a) *General requirement.* Each annual program plan must contain a detailed timetable for accomplishing the goal of providing full educational opportunity for all handicapped children.

(b) *Content of timetable.* (1) The timetable must indicate what percent of the total estimated number of handicapped children the State expects to have full educational opportunity in each succeeding school year.

(2) The data required under this paragraph must be provided:

(i) For each disability category (except for children aged birth through two), and

(ii) For each of the following age ranges: birth through two, three through five, six through seventeen, and eighteen through twenty-one.

(Authority: 20 U.S.C. 1412(2)(A))

§ 300.126 Full educational opportunity goal—facilities, personnel, and services.

(a) *General requirement.* Each annual program plan must include a description of the kind and number of facilities, personnel, and services necessary throughout the State to meet the goal of providing full educational opportunity for all handicapped children. The State educational agency shall include the data required under paragraph (b) of this section and whatever additional data are necessary to meet the requirement.

(b) *Statistical description.* Each annual program plan must include the following data:

(1) The number of additional special class teachers, resource room teachers, and itinerant or consultant teachers needed for each disability category and the number of each of these who are currently employed in the State.

(2) The number of other additional personnel needed, and the number currently employed in the State, including school psychologists, school social workers, occupational therapists, physical therapists, home-hospital teachers, speech-language pathologists, audiologists, teacher aides, vocational education teachers, work study coordinators, physical education teachers, therapeutic recreation specialists, diagnostic personnel, supervisors, and other instructional and non-instructional staff.

(3) The total number of personnel reported under paragraphs (b) (1) and (2) of this section, and the salary costs of those personnel.

(4) The number and kind of facilities needed for handicapped children and the number and kind currently in use in the State, including regular classes serving handicapped children, self-contained classes on a regular school campus, resource rooms, private special education day schools, public special education day schools, private special education residential schools, public special education residential schools, hospital programs, occupational therapy facilities, physical therapy facilities, public sheltered workshops, private sheltered workshops, and other types of facilities.

(5) The total number of transportation units needed for handicapped children, the number of transportation units designed for handicapped children which are in use in the State, and the number of handicapped children who use these units to benefit from special education.

(c) *Data categories.* The data required under paragraph (b) of this section must be provided as follows:

(1) Estimates for serving all handicapped children who require special education and related services,

(2) Current year data, based on the actual numbers of handicapped children receiving special education and related services (as reported under Subpart G), and

(3) Estimates for the next school year.

(d) *Rationale.* Each annual program plan must include a description of the means used to determine the number and salary costs of personnel.

(Authority: 20 U.S.C. 1412(2)(A))

§ 300.127 Priorities.

(a) *General requirement.* Each annual program plan must include information which shows that:

(1) The State has established priorities which meet the requirements under §§ 300.320-300.324 of Subpart C.

(2) The State priorities meet the timelines under § 300.122 of this subpart, and

(3) The State has made progress in meeting those timeliness.

(b) *Child data.* (1) Each annual program plan must show the number of handicapped children known by the State to be in each of the first two priority groups named in § 300.321 of Subpart C:

(i) By disability category, and

(ii) By the age ranges in § 300.124(e)(2) of this subpart.

(c) *Activities and resources.* Each annual program plan must show for each of the first two priority groups:

(1) The programs, services, and activities that are being carried out in the State,

(2) The Federal, State, and local resources that have been committed during the current school year, and

(3) The programs, services, activities, and resources that are to be provided during the next school year.

(Authority: 20 U.S.C. 1412(3))

§ 300.128 Identification, location, and evaluation of handicapped children.

(a) *General requirement.* Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken to insure that:

(1) All children who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated; and

(2) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(b) *Information.* Each annual program plan must:

(1) Designate the State agency (if other than the State educational agency) responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section;

(2) Name each agency that participates in the planning and implementation and describe the nature and extent of its participation;

(3) Describe the extent to which:

(i) The activities described in paragraph (a) of this section have been achieved under the current annual program plan, and

(ii) The resources named for these activities in that plan have been used;

(4) Describe each type of activity to be carried out during the next school year, including the role of the agency named under paragraph (b)(1) of this section, timelines for completing those activities, resources that will be used, and expected outcomes;

(5) Describe how the policies and procedures under paragraph (a) of this section will be monitored to insure that the State educational agency obtains:

(i) The number of handicapped children within each disability category that have been identified, located, and evaluated, and

(ii) Information adequate to evaluate the effectiveness of those policies and procedures; and

(6) Describe the method the State uses to determine which children are currently receiving special education and related services and which children are not receiving special education and related services.

(Authority: 20 U.S.C. 1412(2)(C))

Comment. The State is responsible for insuring that all handicapped children are identified, located, and evaluated, including children in all public and private agencies and institutions in the State. Collection and use of data are subject to the confidentiality requirements in §§ 300.560-300.576.

§ 300.129 Confidentiality of personally identifiable information.

(a) Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to insure the protection of the confidentiality of any personally identifiable information collected, used, or maintained under this part.

(b) The Secretary shall use the criteria in §§ 300.560-300.576 of Subpart E to evaluate the policies and procedures of the State under paragraph (a) of this section.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

Comment. The confidentiality regulations were published in the FEDERAL REGISTER in final form on February 27, 1976 (41 FR 8603-8610), and met the requirements of Part B of the Act, as amended by Pub. L. 94-142. Those regulations are incorporated in §§ 300.560-300.576 of Subpart E.

§ 300.130 Individualized education programs.

(a) Each annual program plan must include information which shows that each public agency in the State maintains records of the individualized education program for each handicapped child, and each public agency establishes, reviews, and revises each program as provided in Subpart C.

(b) Each annual program plan must include:

(1) A copy of each State statute, policy, and standard that regulates the manner in which individualized education programs are developed, implemented, reviewed, and revised, and

(2) The procedures which the State educational agency follows in monitoring and evaluating those programs.

(Authority: 20 U.S.C. 1412(4))

§ 300.131 Procedural safeguards.

Each annual program plan must include procedural safeguards which insure that the requirements in §§ 300.500-300.514 of Subpart E are met.

(Authority: 20 U.S.C. 1412(5)(A))

§ 300.132 Least restrictive environment.

(a) Each annual program plan must include procedures which insure that the requirements in §§ 300.550-300.556 of Subpart E are met.

(b) Each annual program plan must include the following information:

(1) The number of handicapped children in the State, within each disability category, who are participating in regular education programs, consistent with §§ 300.550-300.556 of Subpart E.

(2) The number of handicapped children who are in separate classes or separate school facilities, or who are otherwise removed from the regular education environment.

(Authority: 20 U.S.C. 1412(5)(B))

§ 300.133 Protection in evaluation procedures.

Each annual program plan must include procedures which insure that the requirements in §§ 300.530-300.534 of Subpart E are met.

(Authority: 20 U.S.C. 1412(5)(C))

§ 300.134 Responsibility of State educational agency for all educational programs.

(a) Each annual program plan must include information which shows that the requirements in § 300.600 of Subpart F are met.

(b) The information under paragraph (a) of this section must include a copy of each State statute, State regulation, signed agreement between respective agency officials, and any other document that shows compliance with that paragraph.

(Authority: 20 U.S.C. 1412(6))

§ 300.135 [Reserved]

§ 300.136 Implementation procedures—State educational agency.

Each annual program plan must describe the procedures the State educational agency follows to inform each public agency of its responsibility for insuring effective implementation of procedural safeguards for the handicapped children served by that public agency.

(Authority: 20 U.S.C. 1412(6))

§ 300.137 Procedures for consultation.

Each annual program plan must include an assurance that in carrying out the requirements of section 612 of the Act, procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents of handicapped children.

(Authority: 20 U.S.C. 1412(7)(A))

§ 300.138 Other Federal programs.

Each annual program plan must provide that programs and procedures are established to insure that funds received by the State or any public agency in the State under any other Federal program, including section 121 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241e-2), section 305(b)(8) of that Act (20 U.S.C. 844a(b)(8)) or Title IV-C of that Act (20 U.S.C. 1831), and section 110(a) of the Vocational Education Act of 1963, under which there is specific authority for assistance for the education of handicapped children, are used by the State, or any public agency in the State, only in a manner consistent with the goal of providing free appropriate public education for all handicapped children, except that nothing in this section limits the specific requirements of the laws governing those Federal programs.

(Authority: 20 U.S.C. 1413(a)(2))

§ 300.139 Comprehensive system of personnel development.

Each annual program plan must include the material required under §§ 300.380-300.387 of Subpart C.

(Authority: 20 U.S.C. 1413(a)(3))

§ 300.140 Private schools.

Each annual program plan must include policies and procedures which insure that the requirements of Subpart D are met.

(Authority: 20 U.S.C. 1413(a)(4))

§ 300.141 Recovery of funds for misclassified children.

Each annual program plan must include policies and procedures which insure that the State seeks to recover any funds provided under Part B of the Act for services to a child who is determined to be erroneously classified as eligible to be counted under section 611 (a) or (d) of the Act.

(Authority: 20 U.S.C. 1413(a)(5))

§ 300.142—300.143 [Reserved]

§ 300.144 Hearing on application.

Each annual program plan must include procedures to insure that the State educational agency does not take any final action with respect to an application submitted by a local educational agency before giving the local educational agency reasonable notice and an opportunity for a hearing.

(Authority: 20 U.S.C. 1413(a)(8))

§ 300.145 Prohibition of commingling.

Each annual program plan must provide assurance satisfactory to the Secretary that funds provided under Part B of the Act are not commingled with State funds.

(Authority: 20 U.S.C. 1413(a)(9))

Comment. This assurance is satisfied by the use of a separate accounting system that includes an "audit trail" of the expenditure of the Part B funds. Separate bank accounts are not required. (See 34 CFR 76, Subpart F (Cash Depositories))

§ 300.146 Annual evaluation.

Each annual program plan must include procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children, including evaluation of individualized education programs.

(Authority: 20 U.S.C. 1413(a)(11))

§ 300.147 State advisory panel.

Each annual program plan must provide that the requirements of §§ 300.650-300.653 of Subpart F are met.

(Authority: 20 U.S.C. 1413(a)(12))

§ 300.148 Policies and procedures for use of Part B funds.

Each annual program plan must set forth policies and procedures designed to insure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part B, with particular attention given to sections 611(b), 611(c), 611(d), 612(2), and 612(3) of the Act.

(Authority: 20 U.S.C. 1413(a)(1))

§ 300.149 Description of use of Part B funds.

(a) *State allocation.* Each annual program plan must include the following information about the State's use of funds under § 300.370 of Subpart C and § 300.620 of Subpart F:

(1) A list of administrative positions, and a description of duties for each person whose salary is paid in whole or in part with those funds.

(2) For each position, the percentage of salary paid with those funds.

(3) A description of each administrative activity the State educational agency will carry out during the next school year with those funds.

(4) A description of each direct service and each support service which the State educational agency will provide during the next school year with those funds, and the activities the State advisory panel will undertake during that period with those funds.

(b) *Local educational agency allocation.* Each annual program plan must include:

(1) An estimate of the number and percent of local educational agencies in the State which will receive an allocation under this part (other than local educational agencies which submit a consolidated application),

(2) An estimate of the number of local educational agencies which will receive an allocation under a consolidated application,

(3) An estimate of the number of consolidated applications and the average number of local educational agencies per application, and

(4) A description of direct services the State educational agency will provide under § 300.360 of Subpart C.

(Authority: 20 U.S.C. 1232c(b)(1)(B)(ii))

§ 300.150 [Reserved]

§ 300.151 Additional information if the State educational agency provides direct services.

If a State educational agency provides free appropriate public education for handicapped children or provides them with direct services, its annual program plan must include the information required under §§ 300.226-300.228, 300.231, and 300.235.

(Authority: 20 U.S.C. 1413(b))

LOCAL EDUCATIONAL AGENCY APPLICATIONS—GENERAL

§ 300.180 Submission of application.

In order to receive payments under Part B of the Act for any fiscal year a local educational agency must submit an application to the State educational agency.

(Authority: 20 U.S.C. 1414(a))

§ 300.181 [Reserved]

§ 300.182 The excess cost requirement.

A local educational agency may only use funds under Part B of the Act for the excess costs of providing special education and related services for handicapped children.

(Authority: 20 U.S.C. 1414 (a)(1), (a)(2)(B)(i))

§ 300.183 Meeting the excess cost requirement.

(a) A local educational agency meets the excess cost requirement if it has on the average spent at least the amount determined under § 300.184 for the education of each of its handicapped children. This amount may not include capital outlay or debt service.

(Authority: 20 U.S.C. 1402(20); 1414(a)(1))

Comment. The excess cost requirement means that the local educational agency must spend a certain minimum amount for the education of its handicapped children before Part B funds are used. This insures that children served with Part B funds have at least the same average amount spent on them, from sources other than Part B, as do the children in the school district taken as a whole.

The minimum amount that must be spent for the education of handicapped children is computed under a statutory formula. Section 300.184 implements this forumula and gives a step-by-step method to determine the minimum amount. Excess costs are those costs of special education and related services which exceed the minimum amount. Therefore, if a local educational agency can show that it has (on the average) spent the minimum amount for the education of each of its handicapped children, it has met the excess cost requirement, and all additional costs are excess costs. Part B funds can then be used to pay for these additional costs, subject to the other requirements of Part B (priorities, etc.). In the "Comment" under § 300.184, there is an example of how the minimum amount is computed.

[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.184 Excess costs—computation of minimum amount.

The minimum average amount a local educational agency must spend under § 300.183 for the education of each of its handicapped children is computed as follows:

(a) Add all expenditures of the local educational agency in the preceding school year, except capital outlay and debt service:

(1) For elementary school students, if the handicapped child is an elementary school student, or

(2) For secondary school students, if the handicapped child is a secondary school student.

(b) From this amount, subtract the total of the following amounts spent for elementary school students or for secondary school students, as the case may be:

(1) Amounts the agency spent in the preceding school year from funds awarded under Part B of the Act and Titles I and VII of the Elementary and Secondary Education Act of 1965, and

(2) Amounts from State and local funds which the agency spent in the preceding school year for:

(i) Programs for handicapped children,

(ii) Programs to meet the special educational needs of educationally deprived children, and

(iii) Programs of bilingual education for children with limited English-speaking ability.

(c) Divide the result under paragraph (b) of this section by the average number of students enrolled in the agency in the preceding school year:

(1) In its elementary schools, if the handicapped child is an elementary school student, or

(2) In its secondary schools, if the handicapped child is a secondary school student.

(Authority: 20 U.S.C. 1414(a)(1))

Comment. The following is an example of how a local educational agency might compute the average minimum amount it must spend for the education of each of its handicapped children, under § 300.183. This example follows the formula in § 300.184. Under the statute and regulations, the local educational agency must make one computation for handicapped children in its elementary schools and a separate computation for handicapped children in its secondary schools. The computation for handicapped elementary school students would be done as follows:

a. First, the local educational agency must determine its total amount of expenditures for elementary school students from all sources—local, State, and Federal (including Part B)—in the preceding school year. Only capital outlay and debt service are excluded.

Example: A local educational agency spent the following amounts last year for elementary school students (including its handicapped elementary school students):

(1) From local tax funds	$2,750,000
(2) From State funds	7,000,000
(3) From Federal funds	750,000
	10,500,000

Of this total, $500,000 was for capital outlay and debt service relating to the education of elementary school students. This must be subtracted from total expenditures:

	$10,500,000
	—500,000
Total expenditures for elementary school students (less capital outlay and debt service)	= 10,000,000

b. Next, the local educational agency must subtract amounts spent for:

(1) Programs for handicapped children;

(2) Programs to meet the special educational needs of educationally deprived children; and

(3) Programs of bilingual education for children with limited English-speaking ability.

These are funds which the local edcational agency actually spent, not funds received last year but carried over for the current school year.

Example: The local educational agency spent the following amounts for elementary school students last year:

(1) From funds under Title I of the Elementary and Secondary Education Act of 1965	$300,000
(2) From a special State program for educationally deprived children	200,000
(3) From a grant under Part B	200,000
(4) From State funds for the education of handicapped children	500,000
(5) From a locally-funded program for handicapped children	250,000
(6) From a grant for a bilingual education program under Title VII of the Elementary and Secondary Education Act of 1965	150,000
Total	1,600,000

(A local educational agency would also include any other funds it spent from Federal, State, or local sources for the three basic purposes: Handicapped children, educationally deprived children, and bilingual education for children with limited English-speaking ability.)

This amount is subtracted from the local educational agency's total expenditure for elementary school students computed above:

$10,000,000
− 1,600,000
8,400,000

c. The local educational agency next must divide by the average number of students enrolled in the elementary schools of the agency last year (including its handicapped students).

Example: Last year, an average of 7,000 students were enrolled in the agency's elementary schools. This must be divided into the amount computed under the above paragraph:

$8,400,000/7,000 students=$1,200/student

This figure is in the minimum amount the local educational agency must spend (on the average) for the education of each of its handicapped students. Funds under Part B may be used only for costs over and above this minimum. In this example, if the local educational agency has 100 handicapped elementary school students, it must keep records adequate to show that it has spent at least $120,000 for the education of those students (100 students times $1,200/student), not including capital outlay and debt service.

This $120,000 may come from any funds except funds under Part B, subject to any legal requirements that govern the use of those other funds.

If the local educational agency has handicapped secondary school students, it must do the same computation for them. However the amounts used in the computation would be those the local educational agency spent last year for the education of secondary school students, rather than for elementary school students.

§ 300.185 Computation of excess costs—consolidated application.

The minimum average amount under § 300.183 where two or more local educational agencies submit a consolidated application, is the average of the combined minimum average amounts determined under § 300.184 in those agencies for elementary or secondary school students, as the case may be.

(Authority: 20 U.S.C. 1414(a)(1))

§ 300.186 Excess costs—limitation on use of Part B funds.

(a) The excess cost requirement prevents a local educational agency from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a handicapped child, subject to paragraph (b) of this section.

(b) The excess cost requirement does not prevent a local educational agency from using Part B funds to pay for all of the costs directly attributable to the education of a handicapped child in any of the age ranges three, four, five, eighteen, nineteen, twenty, or twenty-one, if no local or State funds are available for non-handicapped children in that age range. However, the local educational agency must comply with the non-supplanting and other requirements of this part in providing the education and services.

(Authority: 20 U.S.C. 1402(20); 1414(a)(1))

§ 300.190 Consolidated applications.

(a) [Reserved]

(b) *Required applications.* A State educational agency may require local educational agencies to submit a consolidated application for payments under Part B of the Act if the State educational agency determines that an individual application submitted by a local educational agency will be disapproved because:

(1) The agency's entitlement is less than the $7,500 minimum required by section 611(c)(4)(A)(i) of the Act (§ 300.360(a)(1) of Subpart C); or

(2) The agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped children.

(c) *Size and scope of program.* The State educational agency shall establish standards and procedures for determinations under paragraph (b)(2) of this section.

(Authority: 20 U.S.C. 1414(c)(1))

[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.191 [Reserved]

§ 300.192 State regulation of consolidated applications.

(a) The State educational agency shall issue regulations with respect to consolidated applications submitted under this part.

(b) The State educational agency's regulations must:

(1) Be consistent with section 612 (1)-(7) and section 613(a) of the Act, and

(2) Provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this part.

(Authority: 20 U.S.C. 1414(c)(2)(B))

(c) If an intermediate educational unit is required under State law to carry out this part, the joint responsibilities given to local educational agencies under paragraph (b)(2) of this section do not apply to the administration and disbursement of any payments received by the intermediate educational unit. Those administrative responsibilities must be carried out exclusively by the intermediate educational unit.

(Authority: 20 U.S.C. 1414(c)(2)(C))

§ 300.193 State educational agency approval; disapproval.

(a)-(b) [Reserved]

(c) In carrying out its functions under this section, each State educational agency shall consider any decision resulting from a hearing under §§ 300.506-300.513 of Subpart E which is adverse to the local educational agency involved in the decision.

(Authority: 20 U.S.C. 1414(b)(3))

[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.194 Withholding.

(a) If a State educational agency, after giving reasonable notice and an opportunity for a hearing to a local educational agency, decides that the local educational agency in the administration of an application approved by the State educational agency has failed to comply with any requirement in the application, the State educational agency, after giving notice to the local educational agency, shall:

(1) Make no further payments to the local educational agency until the State educational agency is satisfied that there is no longer any failure to comply with the requirement; or

(2) Consider its decision in its review of any application made by the local educational agency under § 300.180;

(3) Or both.

(b) Any local educational agency receiving a notice from a State educational agency under paragraph (a) of this section is subject to the public notice provision in § 300.592.

(Authority: 20 U.S.C. 1414(b)(2))

LOCAL EDUCATIONAL AGENCY APPLICATIONS—CONTENTS

§ 300.220 Child identification.

Each application must include procedures which insure that all children residing within the jurisdiction of the local educational agency who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated, including a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services.

(Authority: 20 U.S.C. 1414(a)(1)(A))

Comment. The local educational agency is responsible for insuring that all handicapped children within its jurisdiction are identified, located, and evaluated, including children in all public and private agencies and institutions within that jurisdiction. Collection and use of data are subject to the confidentiality requirements in §§ 300.560-300.576 of Subpart E.

§ 300.221 Confidentiality of personally identifiable information.

Each application must include policies and procedures which insure that the criteria in §§ 300.560-300.574 of Subpart E are met.

(Authority: 20 U.S.C. 1414(a)(1)(B))

§ 300.222 Full educational opportunitiy goal; timetable.

Each application must: (a) Include a goal of providing full educational opportunity to all handicapped children, aged birth through 21, and

(b) Include a detailed timetable for accomplishing the goal.

(Authority: 20 U.S.C. 1414(a)(1) (C), (D))

§ 300.223 Facilities, personnel, and services.

Each application must provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal in § 300.222.

(Authority: 20 U.S.C. 1414(a)(1)(E))

§ 300.224 Personnel development.

Each application must include procedures for the implementation and use of the comprehensive system of personnel development established by the State educational agency under § 300.140.

(Authority: 20 U.S.C. 1414(a)(1)(C)(i))

§ 300.225 Priorities.

Each application must include priorities which meet the requirements of §§ 300.320-300.324.

(Authority: 20 U.S.C. 1414(a)(1)(C)(ii))

§ 300.226 Parent involvement.

Each application must include procedures to insure that, in meeting the goal under § 300.222, the local educational agency makes provision for participation of and consultation with parents or guardians of handicapped children.

(Authority: 20 U.S.C. 1414(a)(1)(C)(iii))

§ 300.227 Participation in regular education programs.

(a) Each application must include procedures to insure that to the maximum extent practicable, and consistent with §§ 300.550-300.553 of Subpart E, the local educational agency provides special services to enable handicapped children to participate in regular educational programs.

(b) Each application must describe:

(1) The types of alternative placements that are available for handicapped children, and

(2) The number of handicapped children within each disability category who are served in each type of placement.

(Authority: 20 U.S.C. 1414(a)(1)(C)(iv))

§ 300.228 [Reserved]

§ 300.229 Excess cost.

Each application must provide assurance satisfactory to the State educational agency that the local educational agency uses funds provided under Part B of the Act only for costs which exceed the amount computed under § 300.184 and which are directly attributable to the education of handicapped children.

(Authority: 20 U.S.C. 1414(a)(2)(B))

§ 300.230 Nonsupplanting.

(a) Each application must provide assurance satisfactory to the State educational agency that the local educational agency uses funds provided under Part B of the Act to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant those State and local funds.

(b) To meet the requirement in paragraph (a) of this section:

(1) The total amount or average per capita amount of State and local school funds budgeted by the local educational agency for expenditures in the current fiscal year for the education of handicapped children must be at least equal to the total amount or average per capita amount of State and local school funds actually expended for the education of handicapped children in the most recent preceding fiscal year for which the information is available. Allowance may be made for:

(i) Decreases in enrollment of handicapped children; and

(ii) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of school facilities; and

(2) The local educational agency must not use Part B funds to displace State or local funds for any particular cost.

(Authority: 20 U.S.C. 1414(a)(2)(B))

Comment. Under statutes such as Title I of the Elementary and Secondary Education Act of 1965, as amended, the requirement is to not supplant funds that "would" have been expended if the Federal funds were not available. The requirement under Part B, however, is to not supplant funds which have been "expended." This use of the past tense suggests that the funds referred to are those which the State or local agency actually spent at some time before the use of the Part B funds. Therefore, in judging compliance with this requirement, the Secretary looks to see if Part B funds are used for any costs which were previously paid for with State or local funds.

The nonsupplanting requirement prohibits a local educational agency from supplanting State and local funds with Part B funds on either an aggregate basis or for a given expenditure. This means that if an LEA spent $100,000 for special education in FY 1977, it must budget at least $100,000 in FY 1978, unless one of the conditions in § 300.230(b)(1) applies.

Whether a local educational agency supplants with respect to a particular cost would depend on the circumstances of the expenditure. For example, if a teacher's salary has been switched from local funding to Part B funding, this would appear to be supplanting. However, if that teacher was taking over a different position (such as a resource room teacher, for example), it would not be supplanting. Moreover, it might be important to consider whether the particular action of a local educational agency led to an increase in services for handicapped children over that which previously existed. The intent of the requirement is to insure that Part B funds are used to increase State and local efforts and are not used to take their place. Compliance would be judged with this aim in mind. The supplanting requirement is not intended to inhibit better services to handicapped children.

§ 300.231 Comparable services.

(a) Each application must provide assurance satisfactory to the State educational agency that the local educational agency meets the requirements of this section.

(b) A local educational agency may not use funds under Part B of the Act to provide services to handicapped children unless the agency uses State and local funds to provide services to those children which, taken as a whole, are at least comparable to services provided to other handicapped children in that local educational agency.

(c) Each local educational agency shall maintain records which show that the agency meets the requirement in paragraph (b) of this section.

(Authority: 20 U.S.C. 1414(a)(2)(C))

Comment. Under the "comparability" requirement, if State and local funds are used to provide certain services, those services must be provided with State and local funds to all handicapped children in the local educational agency who need them. Part B funds may then be used to supplement existing services, or to provide additional services to meet special needs. This, of course, is subject to the other requirements of the Act, including the priorities under §§ 300.320-300.324.

§§ 300.232—300.234 [Reserved]

§ 300.235 Individualized education program.

Each application must include procedures to assure that the local educational agency complies with §§ 300.340-300.349 of Subpart C.

(Authority: 20 U.S.C. 1414(a)(5))

§ 300.236 [Reserved]

§ 300.237 Procedural safeguards.

Each application must provide assurance satisfactory to the State educational agency that the local educational agency has procedural safeguards which meet the requirements of §§ 300.500-300.514 of Subpart E.

(Authority: 20 U.S.C. 1414(a)(7))

§ 300.238 Use of Part B funds.

Each application must describe how the local educational agency will use the funds under Part B of the Act during the next school year.

(Authority: 20 U.S.C. 1414(a))

§ 300.239 [Reserved]

§ 300.240 Other requirements.

Each local application must include additional procedures and information which the State educational agency may require in order to meet the State annual program plan requirements under §§ 300.120-300.151.

(Authority: 20 U.S.C. 1414(a)(6))

APPLICATION FROM SECRETARY OF INTERIOR

§ 300.260 Submission of annual application; approval.

In order to receive payments under this part, the Secretary of Interior shall submit an annual application which:

(a) Meets applicable requirements of section 614(a) of the Act;

(b) Includes monitoring procedures which are consistent with § 300.601; and

(c) Includes other material as agreed to by the Secretary and the Secretary of Interior.

(Authority: 20 U.S.C. 1411(f))

§ 300.261 Public participation.

In the development of the application for the Department of Interior, the Secretary of Interior shall provide for public participation consistent with §§ 300.280-300.284.

(Authority: 20 U.S.C. 1411(f))

§ 300.262 Use of Part B funds.

(a) The Department of the Interior may use five percent of its payment in any fiscal year, or $350,000, whichever is greater, for administrative costs in carrying out the provisions of this part.

(b) The remainder of the payments to the Secretary of the Interior in any fiscal year must be used in accordance with the priorities under §§ 300.320-300.324 of Subpart C.

(Authority: 20 U.S.C. 1411(f))

[42 FR 42476, Aug. 23, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980 and amended at 51 FR 19311, May 28, 1986]

EFFECTIVE DATE NOTE: In § 300.262, paragraph (a) was revised at 51 FR 19311, May 28, 1986, effective July 23, 1986. For the convenience of the reader, the superseded text is set forth below.

§ 300.262 Use of Part B funds.

(a) The Department of Interior may use five percent of its payments in any fiscal year, or $200,000, whichever is greater, for administrative costs in carrying out the provisions of this part.

* * * * *

§ 300.263 Applicable regulations.

The Secretary of the Interior shall comply with the requirements under Subparts C, E, and F.

(Authority: 20 U.S.C. 1411(f)(2))

PUBLIC PARTICIPATION

§ 300.280 Public hearings before adopting an annual program plan.

(a) Prior to its adoption of an annual program plan, the State educational agency shall:

(1) Make the plan available to the general public,

(2) Hold public hearings, and

(3) Provide an opportunity for comment by the general public on the plan.

(Authority: 20 U.S.C. 1412(7))

§ 300.281 Notice.

(a) The State educational agency shall provide notice to the general public of the public hearings.

(b) The notice must be in sufficient detail to inform the public about:

(1) The purpose and scope of the annual program plan and its relation to Part B of the Education of the Handicapped Act,

(2) The availability of the annual program plan,

(3) The date, time, and location of each public hearing,

(4) The procedures for submitting written comments about the plan, and

(5) The timetable for developing the final plan and submitting it to the Secretary for approval.

(c) The notice must be published or announced:

(1) In newspapers or other media, or both, with circulation adequate to notify the general public about the hearings, and

(2) Enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate.

(Authority: 20 U.S.C. 1412(7))

§ 300.282 Opportunity to participate; comment period.

(a) The State educational agency shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(b) The plan must be available for comment for a period of at least 30 days following the date of the notice under § 300.281.

(Authority: 20 U.S.C. 1412(7))

§ 300.283 Review of public comments before adopting plan.

Before adopting its annual program plan, the State educational agency shall:

(a) Review and consider all public comments, and

(b) Make any necessary modifications in the plan.

(Authority: 20 U.S.C. 1412(7))

§ 300.284 Publication and availability of approved plan.

After the Secretary approves an annual program plan, the State educational agency shall give notice in newspapers or other media, or both, that the plan is approved. The notice must name places throughout the State where the plan is available for access by any interested person.

(Authority: 20 U.S.C. 1412(7))

Subpart C—Services

FREE APPROPRIATE PUBLIC EDUCATION

§ 300.300 Timeliness for free appropriate public education.

(a) *General.* Each State shall insure that free appropriate public education is available to all handicapped children aged three through eighteen within the State not later than September 1, 1978, and to all handicapped children aged three through twenty-one within the State not later than September 1, 1980.

(b) *Age ranges 3-5 and 18-21.* This paragraph provides rules for applying the requirement in paragraph (a) of this section to handicapped children aged three, four, five, eighteen, nineteen, twenty, and twenty-one:

(1) If State law or a court order requires the State to provide education for handicapped children in any disability category in any of these age groups, the State must make a free appropriate public education available to all handicapped children of the same age who have that disability.

(2) If a public agency provides education to non-handicapped children in any of these age groups, it must make a free appropriate public education available to at least a proportionate number of handicapped children of the same age.

(3) If a public agency provides education to 50 percent or more of its handicapped children in any disability category in any of these age groups, it must make a free appropriate public education available to all of its handicapped children of the same age who have that disability.

(4) If a public agency provides education to a handicapped child in any of these age groups, it must make a free appropriate public education available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.

(5) A State is not required to make a free appropriate public education

available to a handicapped child in one of these age groups if:

(i) State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to nonhandicapped children in that age group; or

(ii) The requirement is inconsistent with a court order which governs the provision of free public education to handicapped children in that State.

(Authority: 20 U.S.C. 1412(2)(B); Sen. Rept. No. 94-168 p. 19 (1975))

Comment. 1. The requirement to make free appropriate public education available applies to all handicapped children within the State who are in the age ranges required under § 300.300 and who need special education and related services. This includes handicapped children already in school and children with less severe handicaps, who are not covered under the priorities under § 300.321.

2. In order to be in compliance with § 300.300, each State must insure that the requirement to identify, locate, and evaluate all handicapped children is fully implemented by public agencies throughout the State. This means that before September 1, 1978, every child who has been referred or is on a waiting list for evaluation (including children in school as well as those not receiving an education) must be evaluated in accordance with §§ 300.530-300.533 of Subpart E. If, as a result of the evaluation, it is determined that a child needs special education and related services, an individualized education program must be developed for the child by September 1, 1978, and all other applicable requirements of this part must be met.

3. The requirement to identify, locate, and evaluate handicapped children (commonly referred to as the "child find system") was enacted on August 21, 1974, under Pub. L. 93-380. While each State needed time to establish and implement its child find system, the four year period between August 21, 1974, and September 1, 1978, is considered to be sufficient to insure that the system is fully operational and effective on a Statewide basis.

Under the statute, the age range for the child find requirement (0-21) is greater than the mandated age range for providing free appropriate public education (FAPE). One reason for the broader age requirement under "child find" is to enable States to be aware of and plan for younger children who will require special education and related services. It also ties in with the full educational opportunity goal requirement, which has the same age range as child find. Moreover, while a State is not required to provide "FAPE" to handicapped children below the age ranges mandated under § 300.300, the State may, at its discretion, extend services to those children, subject to the requirements on priorities under §§ 300.320-300.324.

§ 300.301 Free appropriate public education—methods and payments.

(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, when it is necessary to place a handicapped child in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a handicapped child.

(Authority: 20 U.S.C. 1401 (18); 1412(2)(B))

§ 300.302 Residential placement.

If placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

(Authority: 20 U.S.C. 1412(2)(B); 1413(a)(4)(B))

Comment. This requirement applies to placements which are made by public agencies for educational purposes, and includes placements in State-operated schools for the handicapped, such as a State school for the deaf or blind.

§ 300.303 Proper functioning of hearing aids.

Each public agency shall insure that the hearing aids worn by deaf and hard of hearing children in school are functioning properly.

(Authority: 20 U.S.C. 1412(2)(B))

Comment. The report of the House of Representatives on the 1978 appropriation bill includes the following statement regarding hearing aids:

In its report on the 1976 appropriation bill the Committee expressed concern about the condition of hearing aids worn by children in public schools. A study done at the Committee's direction by the Bureau of Education for the Handicapped reveals that up to one-third of the hearing aids are malfunctioning. Obviously, the Committee expects the Office of Education will ensure that hearing impaired school children are receiving adequate professional assessment, follow-up and services.

(Authority: House Report No. 95-381, p. 67 (1977))

§ 300.304 Full educational opportunity goal.

(a) Each State educational agency shall insure that each public agency establishes and implements a goal of providing full educational opportunity to all handicapped children in the area served by the public agency.

(b) Subject to the priority requirements under §§ 300.320-300.324, a State or local educational agency may use Part B funds to provide facilities, personnel, and services necessary to meet the full educational opportunity goal.

(Authority: 20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

Comment. In meeting the full educational opportunity goal, the Congress also encouraged local educational agencies to include artistic and cultural activities in programs supported under this part, subject to the priority requirements under §§ 300.320-300.324. This point is addressed in the following statements from the Senate Report on Pub. L. 94-142:

> The use of the arts as a teaching tool for the handicapped has long been recognized as a viable, effective way not only of teaching special skills, but also of reaching youngsters who had otherwise been unteachable. The Committee envisions that programs under this bill could well include an arts component and, indeed, urges that local educational agencies include the arts in programs for the handicapped funded under this Act. Such a program could cover both appreciation of the arts by the handicapped youngsters, and the utilization of the arts as a teaching tool per se.
>
> Museum settings have often been another effective tool in the teaching of handicapped children. For example, the Brooklyn Museum has been a leader in developing exhibits utilizing the heightened tactile sensory skill of the blind. therefore, in light of the national policy concerning the use of museums in federally supported education programs enunciated in the Education Amendments of 1974, the Committee also urges local educational agencies to include museums in programs for the handicapped funded under this Act.

(Authority: Senate Report No. 94-168, p. 13 (1975))

§ 300.305 Program options.

Each public agency shall take steps to insure that its handicapped children have available to them the variety of educational programs and services available to non-handicapped children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(Authority: 20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

Comment. The above list of program options is not exhaustive, and could include any program or activity in which nonhandicapped students participate. Moreover, vocational education programs must be specially designed if necessary to enable a handicapped student to benefits fully from those programs; and the set-aside funds under the Vocational Education Act of 1963, as amended by Pub. L. 94-482, may be used for this purpose. Part B funds may also be used, subject to the priority requirements under §§ 300.320-300.324.

§ 300.306 Nonacademic services.

(a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped children an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(Authority: 20 U.S.C. 1412(2)(A); 1414(a)(1)(C))

§ 300.307 Physical education.

(a) *General.* Physical education services, specially designed if necessary, must be made available to every handicapped child receiving a free appropriate public education.

(b) *Regular physical education.* Each handicapped child must be afforded the opportunity to participate in the regular physical education program available to non-handicapped children unless:

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's individualized education program.

(c) *Special physical education.* If specially designed physical education is prescribed in a child's individualized education program, the public agency responsible for the education of that child shall provide the services directly, or make arrangements for it to be provided through other public or private programs.

(d) *Education in separate facilities.* The public agency responsible for the education of a handicapped child who is enrolled in a separate facility shall insure that the child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.

(Authority: 20 U.S.C. 1401(16); 1412(5)(B); 1414(a)(6))

Comment. The Report of the House of Representatives on Pub. L. 94-142 includes the following statement regarding physical education:

> Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all non-handicapped children enrolled in public elementary and secondary schools. The Committee is concerned that although these services are available to and required of all children in our school systems, they are often viewed as a luxury for handicapped children.
>
> * * * * *
>
> The Committee expects the Commissioner of Education to take whatever action is necessary to assure that physical education services are available to all handicapped children, and has specifically included physical education within the definition of special education to make clear that the Committee expects such services, specially designed where necessary, to be provided as an integral part of the educational program of every handicapped child.

(Authority: House Report No. 94-332, p. 9 (1975))

PRIORITIES IN THE USE OF PART B FUNDS

§ 300.320 Definitions of "first priority children" and "second priority children."

For the purposes of §§ 300.321-300.324, the term:

(a) "First priority children" means handicapped children who:

(1) Are in an age group for which the State must make available free appropriate public education under § 300.300; and

(2) Are not receiving any education.

(b) "Second priority children" means handicapped children, within each disability, with the most severe handicaps who are receiving an inadequate education.

(Authority: 20 U.S.C. 1412(3))

Comment. After September 1, 1978, there should be no second priority children, since States must insure, as a condition of receiving Part B funds or fiscal year 1979, that all handicapped children will have available a free appropriate public education by that date.

NOTE: The term "free appropriate public education," as defined in § 300.4 of Subpart A, means "special education and related services which * * * are provided in conformity with an individualized education program * * *."

New "First priority children" will continue to be found by the State after September 1, 1978 through on-going efforts to identify, locate, and evaluate all handicapped children.

§ 300.321 Priorities.

(a) Each State and local educational agency shall use funds provided under Part B or the Act in the following order of priorities:

(1) To provide free appropriate public education to first priority children, including the identification, location, and evaluation of first priority children.

(2) To provide free appropriate public education to second priority children, including the identification, location, and evaluation of second priority children.

(3) To meet the other requirements in this part.

(b) The requirements of paragraph (a) of this section do not apply to funds which the State uses for administration under § 300.620.

(Authority: 20 U.S.C. 1411 (b)(1)(B), (b)(2)(B), (c)(1)(B), (c)(2)(A)(ii))

(c) State and local educational agencies may not use funds under Part B of the Act for preservice training.

(Authority: 20 U.S.C. 1413(a)(3); Senate Report No. 94-168, p. 34 (1975))

Comment. Note that a State educational agency as well as local educational agencies must use Part B funds (except the portion used for State administration) for the priorities. A State may have to set aside a portion of its Part B allotment to be able to serve newly identified first priority children.

After September 1, 1978, Part B funds may be used:

(1) To continue supporting child identification, location, and evaluation activities;

(2) To provide free appropriate public education to newly identified first priority children;

(3) To meet the full educational opportunities goal required under § 300.304, including employing additional personnel and providing inservice training, in order to increase the level, intensity and quality of services provided to individual handicapped children; and

(4) To meet the other requirements of Part B.

§ 300.322 First priority children—school year 1977–1978.

(a) In school year 1977-1978, if a major component of a first priority child's proposed educational program is not available (for example, there is no qualified teacher), the public agency responsible for the child's education shall:

(1) Provide an interim program of services for the child; and

(2) Develop an individualized education program for full implementation no later than September 1, 1978.

(b) A local educational agency may use Part B funds for training or other support services in school year 1977-1978 only if all of its first priority children have available to them at least an interim program of services.

(c) A State educational agency may use Part B funds for training or other support services in school year 1977-1978 only if all first priority children in the State have available to them at least an interim program of services.

(Authority: 20 U.S.C. 1411 (b), (c))

Comment. This provision is intended to make it clear that a State or local educational agency may not delay placing a previously unserved (first priority) child until it has, for example, implemented an inservice training program. The child must be placed. After the child is in at least an interim program, the State or local educational agency may use Part B funds for training or other support services needed to provide that child with a free appropriate public education.

§ 300.323 Services to other children.

If a State or a local educational agency is providing free appropriate public education to all of its first priority children, that State or agency may use funds provided under Part B of the Act:

(a) To provide free appropriate public education to handicapped children who are not receiving any education and who are in the age groups not covered under § 300.300 in that State; or

(b) To provide free appropriate public education to second priority children; or

(c) Both.

(Authority: 20 U.S.C. 1411 (b)(1)(B), (b)(2)(B), (c)(2)(A)(ii))

§ 300.324 Application of local educational agency to use funds for the second priority.

A local educational agency may use funds provided under Part B of the Act for second priority children, if it provides assurance satisfactory to the State educational agency in its application (or an amendment to its application):

(a) That all first priority children have a free appropriate public education available to them;

(b) That the local educational agency has a system for the identification, location, and evaluation of handicapped children, as described in its application; and

(c) That whenever a first priority child is identified, located, and evaluated, the local educational agency makes available a free appropriate public education to the child.

(Authority: 20 U.S.C. 1411 (b)(1)(B), (c)(1)(B); 1414(a)(1)(C)(ii))

INDIVIDUALIZED EDUCATION PROGRAMS

§ 300.340 Definition.

As used in this part, the term "individualized education program" means a written statement for a handicapped child that is developed and implemented in accordance with §§ 300.341-300.349.

(Authority: 20 U.S.C. 1401(19))

§ 300.341 State educational agency responsibility.

(a) *Public agencies.* The State educational agency shall insure that each public agency develops and implements an individualized education program for each of its handicapped children.

(b) *Private schools and facilities.* The State educational agency shall insure that an individualized education program is developed and implemented for each handicapped child who:

(1) Is placed in or referred to a private school or facility by a public agency; or

(2) Is enrolled in a parochial or other private school and receives special education or related services from a public agency.

(Authority: 20 U.S.C. 1412 (4), (6); 1413(a)(4))

Comment. This section applies to all public agencies, including other State agencies (e.g., departments of mental health and welfare), which provide special education to a handicapped child either directly, by contract or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a handicapped child, that agency would be responsible for insuring that an individualized education program is developed for the child.

§ 300.342 When individualized education programs must be in effect.

(a) On October 1, 1977, and at the beginning of each school year thereafter, each public agency shall have in effect an individualized education program for every handicapped child who is receiving special education from that agency.

(b) An individualized education program must:

(1) Be in effect before special education and related services are provided to a child; and

(2) Be implemented as soon as possible following the meetings under § 300.343.

(Authority: 20 U.S.C. 1412 (2)(B), (4), (6); 1414(a)(5); Pub. L. 94-142, Sec. 8(c) (1975))

Comment. Under paragraph (b)(2), it is expected that a handicapped child's individualized education program (IEP) will be implemented immediately following the meetings under § 300.343. An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances which require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.

§ 300.343 Meetings.

(a) *General.* Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising a handicapped child's individualized education program.

(b) *Handicapped children currently served.* If the public agency has determined that a handicapped child will receive special education during school year 1977-1978, a meeting must be held early enough to insure that an individualized education program is developed by October 1, 1977.

(c) *Other handicapped children.* For a handicapped child who is not included under paragraph (b) of this action, a meeting must be held within thirty calendar days of a determination that the child needs special education and related services.

(d) *Review.* Each public agency shall initiate and conduct meetings to periodically review each child's individualized education program and if appropriate revise its provisions. A meeting must be held for this purpose at least once a year.

(Authority: 20 U.S.C. 1412(2)(B), (4), (6); 1414(a)(5))

Comment. The dates on which agencies must have individualized education programs (IEPs) in effect are specified in

§ 300.342 (October 1, 1977, and the beginning of each school year thereafter). However, except for new handicapped children (i.e., those evaluated and determined to need special education after October 1, 1977), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency.

In order to have IEPs in effect by the dates in § 300.342, agencies could hold meetings at the end of the school year or during the summer preceding those dates. In meeting the October 1, 1977 timeline, meetings could be conducted up through the October 1 date. Thereafter, meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

The statute requires agencies to hold a meeting at least once each year in order to review, and if appropriate revise, each child's IEP. The timing of those meetings could be on the anniversary date of the last IEP meeting on the child, but this is left to the discretion of the agency.

§ 300.344 Participants in meetings.

(a) *General.* The public agency shall insure that each meeting includes the following participants:

(1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education.

(2) The child's teacher.

(3) One or both of the child's parents, subject to § 300.345.

(4) The child, where appropriate.

(5) Other individuals at the discretion of the parent or agency.

(b) *Evaluation personnel.* For a handicapped child who has been evaluated for the first time, the public agency shall insure:

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the public agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(Authority: 20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5))

Comment. 1. In deciding which teacher will participate in meetings on a child's individualized education program, the agency may wish to consider the following possibilities:

(a) For a handicapped child who is receiving special education, the "teacher" could be the child's special education teacher. If the child's handicap is a speech impairment, the "teacher" could be the speech-language pathologist.

(b) For a handicapped child who is being considered for placement in special education, the "teacher" could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.

(c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.

2. Either the teacher or the agency representative should be qualified in the area of the child's suspected disability.

3. For a child whose primary handicap is a speech impairment, the evaluation personnel participating under paragraph (b)(1) of this section would normally be the speech-language pathologist.

§ 300.345 Parent participation.

(a) Each public agency shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) The notice under paragraph (a)(1) of this section must indicate the purpose, time, and location of the meeting, and who will be in attendance.

(c) If neither parent can attend, the public agency shall use other methods to insure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls.

(2) Copies of correspondence sent to the parents and any responses received, and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the individualized education program.

(Authority: 20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5))

Comment. The notice in paragraph (a) could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c), the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

§ 300.346 Content of individualized education program.

The individualized education program for each child must include:

(a) A statement of the child's present levels of educational performance;

(b) A statement of annual goals, including short term instructional objectives;

(c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;

(d) The projected dates for initiation of services and the anticipated duration of the services; and

(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(Authority: 20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5); Senate Report No. 94-168, p. 11 (1975))

§ 300.347 Private school placements.

(a) *Developing individualized education programs.* (1) Before a public agency places a handicapped child in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an individualized education program for the child in accordance with § 300.343.

(2) The agency shall insure that a representative of the private school facility attends the meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school or facility, including individual or conference telephone calls.

(3) The public agency shall also develop an individualized educational program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations.

(b) *Reviewing and revising individualized education programs.* (1) After a handicapped child enters a private school or facility, any meetings to review and revise the child's individualized education program may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall insure that the parents and an agency representative:

(i) Are involved in any decision about the child's individualized education program; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's individualized education program, responsibility for compliance with this part remains with the public agency and the State educational agency.

(Authority: 20 U.S.C. 1413(a)(4)(B))

§ 300.348 Handicapped children in parochial or other private schools.

If a handicapped child is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall:

(a) Initiate and conduct meetings to develop, review, and revise an individualized education program for the child, in accordance with § 300.343; and

(b) Insure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school, including individual or conference telephone calls.

(Authority: 20 U.S.C. 1413(a)(4)(A))

§ 300.349 Individualized education program—accountability.

Each public agency must provide special education and related services to a handicapped child in accordance with an individualized education program. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

(Authority: 20 U.S.C. 1412(2)(B); 1414(a) (5), (6); Cong. Rec. at H7152 (daily ed., July 21, 1975))

Comment. This section is intended to relieve concerns that the individualized education program constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the objectives and goals listed in the individualized education program. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made.

DIRECT SERVICE BY THE STATE EDUCATIONAL AGENCY

§ 300.360 Use of local educational agency allocation for direct services.

(a) A State educational agency may not distribute funds to a local educational agency, and shall use those funds to insure the provision of a free appropriate public education to handicapped children residing in the area served by the local educational agency, if the local educational agency, in any fiscal year:

(1) Is entitled to less than $7,500 for that fiscal year (beginning with fiscal year 1979);

(2) Does not submit an application that meets the requirements of §§ 300.220-300.240;

(3) Is unable or unwilling to establish and maintain programs of free appropriate public education;

(4) Is unable or unwilling to be consolidated with other local educational agencies in order to establish and maintain those programs; or

(5) Has one or more handicapped children who can best be served by a regional or State center designed to meet the needs of those children.

(b) In meeting the requirements of paragraph (a) of this section, the State educational agency may provide special education and related services directly, by contract, or through other arrangements.

(c) The excess cost requirements under §§ 300.182-300.186 do not apply to the State educational agency.

(Authority: 20 U.S.C. 1411(c)(4); 1413(b); 1414(d))

Comment. Section 300.360 is a combination of three provisions in the statute (Sections 611(c)(4), 613(b), and 614(d)). This section focuses mainly on the State's administration and use of local entitlements under Part B.

The State educational agency, as a recipient of Part B funds is responsible for insuring that all public agencies in the State comply with the provisions of the Act, regardless of whether they receive Part B funds. If a local educational agency elects not to apply for its Part B entitlement, the State would be required to use those funds to insure that a free appropriate public education (FAPE) is made available to children residing in the area served by that local agency. However, if the local entitlement is not sufficient for this purpose, additional State or local funds would have to be expended in order to insure that "FAPE" and the other requirements of the Act are met.

Moreover, if the local educational agency is the recipient of any other Federal funds, it would have to be in compliance with Subpart D of the regulations for section 504 of the Rehabilitation Act of 1973 (34 CFR Part 104). It should be noted that the term "FAPE" has different meanings under Part B and section 504. For Example, under Part B, "FAPE" is a statutory term which requires special education and related services to be provided in accordance with an individualized education program (IEP). However, under section 504, each recipient must provide an education which includes services that are "designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met * * *" Those regulations state that implementation of an IEP, in accordance with Part B, is one means of meeting the "FAPE" requirement.

§ 300.361 Nature and location of services.

The State educational agency may provide special education and related services under § 300.360(a) in the manner and at the location it considers appropriate. However, the manner in which the education and services are provided must be consistent with the requirements of this part (including the least restrictive environment provisions in §§ 300.550-300.556 of Subpart E).

(Authority: 20 U.S.C. 1414(d))

§ 300.370 Use of State educational agency allocation for direct and support services.

(a) The State shall use the portion of its allocation it does not use for administration to provide support services and direct services in accordance with the priority requirements under §§ 300.320-300.324.

(b) For the purposes of paragraph (a) of this section:

(1) "Direct services" means services provided to a handicapped child by the State directly, by contract, or through other arrangements.

(2) "Support services" includes implementing the comprehensive system of personnel development under §§ 300.380-300.388, recruitment and training of hearing officers and surrogate parents, and public information and parent training activities relating to a free appropriate public education for handicapped children.

(Authority: 20 U.S.C. 1411(b)(2), (c)(2))

§ 300.371 State matching.

Beginning with the period July 1, 1978-June 30, 1979, and for each following year, the funds that a State uses for direct and support services under § 300.370 must be matched on a program basis by the State from funds other than Federal funds. This requirement does not apply to funds that the State uses under § 300.360.

(Authority: 20 U.S.C. 1411(c)(2)(B), (c)(4)(B))

Comment. The requirement in § 300.371 would be satisfied if the State can document that the amount of State funds expended for each major program area (e.g., the comprehensive system of personnel development) is at least equal to the expenditure of Federal funds in that program area.

§ 300.372 Applicability of nonsupplanting requirement.

Beginning with funds appropriated for Fiscal Year 1979 and for each following Fiscal Year, the requirement in section 613(a)(9) of the Act, which prohibits supplanting with Federal funds, does not apply to funds that the State uses from its allocation under § 300.706(a) of Subpart G for administration, direct services, or support services.

(Authority: 20 U.S.C. 1411(c)(3))

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

§ 300.380 Scope of system.

Each annual program plan must include a description of programs and procedures for the development and implementation of a comprehensive system of personnel development which includes:

(a) The inservice training of general and special educational instructional, related services, and support personnel;

(b) Procedures to insure that all personnel necessary to carry out the purposes of the Act are qualified (as defined in § 300.12 of Subpart A) and that activities sufficient to carry out this personnel development plan are scheduled; and

(c) Effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices and materials developed through those projects.

(Authority: 20 U.S.C. 1413(a)(3))

§ 300.381 Participation of other agencies and institutions.

(a) The State educational agency must insure that all public and private institutions of higher education, and other agencies and organizations (including representatives of handicapped, parent, and other advocacy organizations) in the state which have an interest in the preparation of personnel for the education of handicapped children, have an opportunity to participate fully in the development, review, and annual updating of the comprehensive system of personnel development.

(b) The annual program plan must describe the nature and extent of participation under paragraph (a) of this section and must describe responsibilities of the State educational agency, local educational agencies, public and private institutions of higher education, and other agencies:

(1) With respect to the comprehensive system as a whole, and

(2) With respect to the personnel development plan under § 300.383.

(Authority: 20 U.S.C. 1412(7)(A); 1413(a)(3))

§ 300.382 Inservice training.

(a) As used in this section, "inservice training" means any training other than that received by an individual in a full-time program which leads to a degree.

(b) Each annual program plan must provide that the State educational agency:

(1) Conducts an annual needs assessment to determine if a sufficient number of qualified personnel are available in the State; and

(2) Initiates inservice personnel development programs based on the assessed needs of State-wide significance related to the implementation of the Act.

(c) Each annual program plan must include the results of the needs assessment under paragraph (b)(1) of this section, broken out by need for new personnel and need for retrained personnel.

(d) The State educational agency may enter into contracts with institutions of higher education, local educational agencies or other agencies, institutions, or organizations (which may include parent, handicapped, or other advocacy organizations), to carry out:

(1) Experimental or innovative personnel development programs;

(2) Development or modification of instructional materials; and

(3) Dissemination of significant information derived from educational research and demonstration projects.

(e) Each annual program plan must provide that the State educational agency insures that ongoing inservice training programs are available to all personnel who are engaged in the education of handicapped children, and that these programs include:

(1) The use of incentives which insure participation by teachers (such as released time, payment for participation, options for academic credit, salary step credit, certification renewal, or updating professional skills);

(2) The involvement of local staff; and

(3) The use of innovative practices which have been found to be effective.

(f) Each annual program plan must:

(1) Describe the process used in determining the inservice training needs of personnel engaged in the education of handicapped children;

(2) Identify the areas in which training is needed (such as individualized education programs, non-discriminatory testing, least restrictive environment, procedural safeguards, and surrogate parents);

(3) Specify the groups requiring training (such as special teachers, regular teachers, administrators, psychologists, speech-language pathologists, audiologists, physical education teachers, therapeutic recreation specialists, physical therapists, occupational therapists, medical personnel, parents, volunteers, hearing officers, and surrogate parents);

(4) Describe the content and nature of training for each area under paragraph (f)(2) of this section;

(5) Describe how the training will be provided in terms of (i) geographical scope (such as Statewide, regional, or local), and (ii) staff training source (such as college and university staffs, State and local educational agency personnel, and non-agency personnel);

(6) *Specify*: (i) The funding sources to be used, and

(ii) The time frame for providing it; and

(7) Specify procedures for effective evaluation of the extent to which program objectives are met.

(Authority: 20 U.S.C. 1413(a)(3))

§ 300.383 Personnel development plan.

Each annual program plan must: (a) Include a personnel development plan which provides a structure for personnel planning and focuses on preservice and inservice education needs;

(b) Describe the results of the needs assessment under § 300.382(b)(1) with respect to identifying needed areas of training, and assigning priorities to those areas; and

(c) Identify the target populations for personnel development, including general education and special education instructional and administrative personnel, support personnel, and other personnel (such as paraprofessionals, parents, surrogate parents, and volunteers).

(Authority: 20 U.S.C. 1413(a)(3))

§ 300.384 Dissemination.

(a) Each annual program plan must include a description of the State's procedures for acquiring, reviewing, and disseminating to general and special educational instructional and support personnel, administrators of programs for handicapped children, and other interested agencies and organizations (including parent, handicapped, and other advocacy organizations) significant information and promising practices derived from educational research, demonstration, and other projects.

(b) Dissemination includes:

(1) Making those personnel, administrators, agencies, and organizations aware of the information and practices;

(2) Training designed to enable the establishment of innovative programs and practices targeted on identified local needs; and

(3) Use of instructional materials and other media for personnel development and instructional programming.

(Authority: 20 U.S.C. 1413(a)(3))

§ 300.385 Adoption of educational practices.

(a) Each annual program plan must provide for a statewide system designed to adopt, where appropriate, promising educational practices and materials proven effective through research and demonstration.

(b) Each annual program plan must provide for thorough reassessment of educational practices used in the State.

(c) Each annual program plan must provide for the identification of State, local, and regional resources (human and material) which will assist in meeting the State's personnel preparation needs.

(Authority: 20 U.S.C. 1413(a)(3))

§ 300.386 [Reserved]

§ 300.387 Technical assistance to local educational agencies.

Each annual program plan must include a description of technical assistance that the State educational agency gives to local educational agencies in their implementation of the State's comprehensive system of personnel development.

(Authority: 20 U.S.C. 1413(a)(3))

Subpart D—Private Schools

HANDICAPPED CHILDREN IN PRIVATE SCHOOLS PLACED OR REFERRED BY PUBLIC AGENCIES

§ 300.400 Applicability of §§ 300.401-300.403.

Sections 300.401-300.403 apply only to handicapped children who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

(Authority: 20 U.S.C. 1413(a)(4)(B))

§ 300.401 Responsibility of State educational agency.

Each State educational agency shall insure that a handicapped child who is placed in or referred to a private school or facility by a public agency:

(a) Is provided special education and related services:

(1) In conformance with an individualized education program which meets the requirements under §§ 300.340-300.349 of Subpart C;

(2) At no cost to the parents; and

(3) At a school or facility which meets the standards that apply to State and local educational agencies (including the requirements in this part); and

(b) Has all of the rights of a handicapped child who is served by a public agency.

(Authority: 20 U.S.C. 1413(a)(4)(B))

§ 300.402 Implementation by State educational agency.

In implementing § 300.401, the State educational agency shall:

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a handicapped child; and

(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards which apply to them.

(Authority: 20 U.S.C. 1413(a)(4)(B))

§ 300.403 Placement of children by parents.

(a) If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the private school or facility. However, the public agency shall make services available to the child as provided under §§ 300.450-300.460.

(b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under §§ 300.500-300.514 of Subpart E.

(Authority: 20 U.S.C. 1412(2)(B); 1415)

HANDICAPPED CHILDREN IN PRIVATE SCHOOLS NOT PLACED OR REFERRED BY PUBLIC AGENCIES

§ 300.450 Definition of "private school handicapped children."

As used in this part, "private school handicapped children" means handicapped children enrolled in private schools or facilities other than handicapped children covered under §§ 300.400—300.402.

(Authority: 20 U.S.C. 1413(a)(4)(A))

[49 FR 48526, Dec. 12, 1984]

§ 300.451 State educational agency responsibility.

The State educational agency shall insure that—

(a) To the extent consistent with their number and location in the State, provision is made for the participation of private school handicapped children in the program assisted or carried out under this part by providing them with special education and related services; and

(b) The requirements in 34 CFR 76.651-76.663 of EDGAR are met.

(Authority: 20 U.S.C. 1413(a)(4)(A))

[45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.452 Local educational agency responsibility.

(a) Each local educational agency shall provide special education and related services designed to meet the needs of private school handicapped children residing in the jurisdiction of the agency.

(Authority: Sec. 1413(a)(4)(A); 1414(a)(6))

[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

PROCEDURES FOR BY-PASS

§ 300.480 By-pass—general.

(a) The Secretary implements a by-pass if a State educational agency is, and was on December 2, 1983, prohibited by law from providing for the participation of private school handicapped children in the program assisted or carried out under this part, as required by section 613(a)(4)(A) of the Act and by §§ 300.451-300.452.

(b) The Secretary waives the requirement of section 613(a)(4)(A) of the Act and of §§ 300.451-300.452 if the Secretary implements a by-pass.

(Authority: 20 U.S.C. 1413(d)(1))

[49 FR 48526, Dec. 12, 1984]

§ 300.481 Provisions for services under a by-pass.

(a) Before implementing a by-pass, the Secretary consults with appropriate public and private school officials, including State educational agency officials, in the affected State to consider matters such as—

(1) The prohibition imposed by State law which results in the need for a by-pass;

(2) The scope and nature of the services required by private school handicapped children in the State, and the number of children to be served under the by-pass; and

(3) The establishment of policies and procedures to ensure that private school handicapped children receive services consistent with the requirements of section 613(a)(4)(A) of the Act, §§ 300.451-300.452, and 34 CFR 76.651-76.662.

(b) After determining that a by-pass is required, the Secretary arranges for the provision of services to private school handicapped children in the State in a manner consistent with the requirements of section 613(a)(4)(A) of the Act and §§ 300.451—300.452 by providing services through one or more agreements with appropriate parties.

(c) For any fiscal year in which a by-pass is implemented, the Secretary determines the maximum amount to be paid to the providers of services by multiplying—

(1) A per child amount, which may not exceed the amount per child provided by the Secretary under this part for all handicapped children in the State for the preceding fiscal year; by

(2) The number of private school handicapped children (as defined by §§ 300.5(a) and 300.450) in the State, as determined by the Secretary on the basis of the most recent satisfactory data available, which may include an estimate of the number of those handicapped children.

(d) The Secretary deducts from the State's allocation under this part the amount the Secretary determines is necessary to implement a by-pass and pays that amount to the provider of services. The Secretary may withhold this amount from the State's allocation pending final resolution of any investigation or complaint that could result in a determination that a by-pass must be implemented.

(Authority: 20 U.S.C. 1413(d)(2))

[49 FR 48526, Dec. 12, 1984]

DUE PROCESS PROCEDURES

SOURCE: Sections 300.482 through 300.486 appear at 49 FR 48526, Dec. 12, 1984, unless otherwise noted.

§ 300.482 Notice of intent to implement a by-pass.

(a) Before taking any final action to implement a by-pass, the Secretary provides the affected State educational agency with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed by-pass in sufficient detail to allow the State educational agency to respond;

(2) Advises the State educational agency that it has a specific period of time (at least 45 days) from receipt of the written notice to submit written objections to the proposed by-pass and that it may request in writing the opportunity for a hearing to show cause why a by-pass should not be implemented.

(c) The Secretary sends the notice to the State educational agency by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1413(d)(3)(A))

§ 300.483 Request to show cause.

A State educational agency seeking an opportunity to show cause why a by-pass should not be implemented shall submit a written request for a show cause hearing to the Secretary.

(Authority: 20 U.S.C. 1413(d)(3)(A))

§ 300.484 Show cause hearing.

(a) If a show cause hearing is requested, the Secretary—

(1) Notifies the State educational agency and other appropriate public and private school officials of the time and place for the hearing; and

(2) Designates a person to conduct the show cause hearing. The designee must not have had any responsibility for the matter brought for a hearing.

(b) At the show cause hearing, the designee considers matters such as—

(1) The necessity for implementing a by-pass;

(2) Possible factual errors in the written notice of intent to implement a by-pass; and

(3) The objections raised by public and private school representatives.

(c) The designee may regulate the course of the proceedings and the conduct of parties during the pendency of the proceedings. The designee takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including procedures such as those established in 34 CFR 78.61(a), *Authority and Responsibilities of Panels.*

(d) The designee may interpret applicable statutes and regulations, but may not waive them or rule on their validity.

(e) The designee arranges for the preparation, retention, and, if appropriate, dissemination of the record of the hearing.

(Authority: 20 U.S.C. 1413(d)(3)(A))

§ 300.485 Decision.

(a) The designee who conducts the show cause hearing—

(1) Issues a written decision which includes a statement of findings; and

(2) Submits a copy of the decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(b) Each party may submit comments and recommendations on the designee's decision to the Secretary within 15 days of the date the party receives the designee's decision.

(c) The Secretary adopts, reverses, or modifies the designee's decision and notifies the State educational agency of the Secretary's final action. That notice is sent by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1413(d)(3)(A))

§ 300.486 Judicial review.

If dissatisfied with the Secretary's final action, the State educational agency may, within 60 days after notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located. The procedures for judicial review are described in section 613(d)(3)(B)—(D) of the Act.

(Authority: 20 U.S.C. 1413(d)(3)(B)—(D)))

Subpart E—Procedural Safeguards

DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

§ 300.500 Definitions of "consent", "evaluation", and "personally identifiable".

As used in this part: "Consent" means that:

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.,

"Evaluation" means procedures used in accordance with §§ 300.530-300.534 to determine whether a child is handicapped and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

"Personally identifiable" means that information includes:

(a) The name of the child, the child's parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's social security number or student number; or

(d) A list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1415, 1417(c))

§ 300.501 General responsibility of public agencies.

Each State educational agency shall insure that each public agency establishes and implements procedural safeguards which meet the requirements of §§ 300.500-300.514.

(Authority: 20 U.S.C. 1415(a))

§ 300.502 Opportunity to examine records.

The parents of a handicapped child shall be afforded, in accordance with the procedures in §§ 300.562-300.569 an opportunity to inspect and review all education records with respect to:

(a) The identification, evaluation, and educational placement of the child, and

(b) The provision of a free appropriate public education to the child.

(Authority: 20 U.S.C. 1415(b)(1)(A))

§ 300.503 Independent educational evaluation.

(a) *General.* (1) The parents of a handicapped child have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(3) For the purposes of this part:

(i) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

(ii) "Public expense" means that the public agency either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.301 of Subpart C.

(b) *Parent right to evaluation at public expense.* A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under § 300.506 of this subpart to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(c) *Parent initiated evaluations.* If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

(1) Must be considered by the public agency in any decision made with respect to the provision of a free appropriate public education to the child, and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) *Requests for evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) *Agency criteria.* Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

(Authority: 20 U.S.C. 1415(b)(1)(A))

§ 300.504 Prior notice; parent consent.

(a) *Notice.* Written notice which meets the requirements under § 300.505 must be given to the parents of a handicapped child a reasonable time before the public agency:

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the

provision of a free appropriate public education to the child.

(b) *Consent.* (1) Parental consent must be obtained before:

(i) Conducting a preplacement evaluation; and

(ii) Initial placement of a handicapped child in a program providing special education and related services.

(2) Except for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child.

(c) *Procedures where parent refuses consent.* (1) Where State law requires parental consent before a handicapped child is evaluated or initially provided special education and related services, State procedures govern the public agency in overriding a parent's refusal to consent.

(2) (i) Where there is no State law requiring consent before a handicapped child is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in §§ 300.506–300.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent.

(ii) If the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent's consent, subject to the parent's rights under §§ 300.510–300.513.

(Authority: 20 U.S.C. 1415(b)(1)(C), (D))

Comment. 1. Any changes in a child's special education program, after the initial placement, are not subject to parental consent under Part B, but are subject to the prior notice requirement in paragraph (a) and the individualized education program requirements in Subpart C.

2. Paragraph (c) means that where State law requires parental consent before evaluation or before special education and related services are initially provided, and the parent refuses (or otherwise withholds) consent, State procedures, such as obtaining a court order authorizing the public agency to conduct the evaluation or provide the education and related services, must be followed.

If, however, there is no legal requirement for consent outside of these regulations, the public agency may use the due process procedures under this subpart to obtain a decision to allow the evaluation or services without parental consent. The agency must notify the parent of its actions, and the parent has appeal rights as well as rights at the hearing itself.

§ 300.505 Content of notice.

(a) The notice under § 300.504 must include:

(1) A full explanation of all of the procedural safeguards available to the parents under Subpart E;

(2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(4) A description of any other factors which are relevant to the agency's proposal or refusal.

(b) The notice must be:

(1) Written in language understandable to the general public, and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of the parent is not a written language, the State or local educational agency shall take steps to insure:

(1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(2) That the parent understands the content of the notice, and

(3) That there is written evidence that the requirements in paragraphs (c) (1) and (2) of this section have been met.

(Authority: 20 U.S.C. 1415(b)(1)(D))

§ 300.506 Impartial due process hearing.

(a) A parent or a public educational agency may initiate a hearing on any of the matters described in § 300.504(a) (1) and (2).

(b) The hearing must be conducted by the State educational agency or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the State educational agency.

(c) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if:

(1) The parent requests the information; or

(2) The parent or the agency initiates a hearing under this section.

(Authority: 20 U.S.C. 1416(b)(2))

Comment: Many States have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of handicapped children, and the provision of a free appropriate public education to those children. Mediations have been conducted by members of State educational agencies or local educational agency personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under this subpart.

§ 300.507 Impartial hearing officer.

(a) A hearing may not be conducted:

(1) By a person who is an employee of a public agency which is involved in the education or care of the child, or

(2) By any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(Authority: 20 U.S.C. 1414(b)(2))

§ 300.508 Hearing rights.

(a) Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

(4) Obtain a written or electronic verbatim record of the hearing;

(5) Obtain written findings of fact and decisions. (The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the State advisory panel established under Subpart F).

(b) Parents involved in hearings must be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

(Authority: 20 U.S.C. 1415(d))

§ 300.509 Hearing decision; appeal.

A decision made in a hearing conducted under this subpart is final, unless a party to the hearing appeals the decision under § 300.510 or § 300.511.

(Authority: 20 U.S.C. 1415(c))

§ 300.510 Administrative appeal; impartial review.

(a) If the hearing is conducted by a public agency other than the State educational agency, any party aggrieved by the findings and decision in the hearing may appeal to the State educational agency.

(b) If there is an appeal, the State educational agency shall conduct an impartial review of the hearing. The official conducting the review shall:

(1) Examine the entire hearing record;

(2) Insure that the procedures at the hearing were consistent with the requirements of due process;

(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in § 300.508 apply;

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(5) Make an independent decision on completion of the review; and

(6) Give a copy of written findings and the decision to the parties.

(c) The decision made by the reviewing official is final, unless a party brings a civil action under § 300.512.

(Authority: 20 U.S.C. 1415 (c), (d); H. Rep. No. 94-664, at p. 49 (1975))

Comment. 1. The State educational agency may conduct its review either directly or through another State agency acting on its behalf. However, the State educational agency remains responsible for the final decision on review.

2. All parties have the right to continue to be represented by counsel at the State administrative review level, whether or not the reviewing official determines that a further hearing is necessary. If the reviewing official decides to hold a hearing to receive additional evidence, the other rights in § 300.508, relating to hearings, also apply.

§ 300.511 Civil action.

Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under § 300.510 of this subpart, and any party aggrieved by the decision of a reviewing officer under § 300.510 has the right to bring a civil action under section 615(e)(2) of the Act.

(Authority: 20 U.S.C. 1415)

§ 300.512 Timeliness and convenience of hearings and reviews.

(a) The public agency shall insure that not later than 45 days after the receipt of a request for a hearing:

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The State educational agency shall insure that not later than 30 days after the receipt of a request for a review:

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415)

§ 300.513 Child's status during proceedings.

(a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

(Authority: 20 U.S.C. 1415(e)(3))

Comment. Section 300.513 does not permit a child's placement to be chaged during a complaint proceeding, unless the parents and agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

§ 300.514 Surrogate parents.

(a) *General.* Each public agency shall insure that the rights of a child are protected when:

(1) No parent (as defined in § 300.10) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) *Duty of public agency.* The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method (1) for determining whether a child needs a surrogate parent, and (2) for assigning a surrogate parent to the child.

(c) *Criteria for selection of surrogates.* (1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall insure that a person selected as a surrogate:

(i) Has no interest that conflicts with the interest of the child he or she represents; and

(ii) Has knowledge and skills, that insure adequate representation of the child.

(d) *Non-employee requirement; compensation.* (1) A person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraphs (c) and (d)(1) of this section, is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(e) *Responsibilities.* The surrogate parent may represent the child in all matters relating to:

(1) The identification, evaluation, and educational placement of the child, and

(2) The provision of a free appropriate public education to the child.

(Authority: 20 U.S.C. 1415(b)(1)(B))

PROTECTION IN EVALUATION PROCEDURES

§ 300.530 General.

(a) Each State educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of §§ 300.530-300.534.

(b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory.

(Authority: 20 U.S.C. 1412(5)(C))

§ 300.531 Preplacement evaluation.

Before any action is taken with respect to the initial placement of a handicapped child in a special education program, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of § 300.532.

(Authority: 20 U.S.C. 1412(5)(C))

§ 300.532 Evaluation procedures.

State and local educational agencies shall insure, at a minimum, that:

(a) Tests and other evaluation materials:

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producer;

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure);

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child; and

(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

(f) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(Authority: 20 U.S.C. 1412(5)(C))

Comment. Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision.

§ 300.533 Placement procedures.

(a) In interpreting evaluation data and in making placement decisions, each public agency shall:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(2) Insure that information obtained from all of these sources is documented and carefully considered;

(3) Insure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(4) Insure that the placement decision is made in conformity with the least restrictive environment rules in §§ 300.550-300.554.

(b) If a determination is made that a child is handicapped and needs special education and related services, an individualized education program must be developed for the child in accordance with §§ 300.340-300.349 of Subpart C.

(Authority: 20 U.S.C. 1412(5)(C); 1414(a)(5))

Comment. Paragraph (a)(1) includes a list of examples of sources that may be used by a public agency in making placement decisions. The agency would not have to use all the sources in every instance. The point of the requirement is to insure that more than one source is used in interpreting evaluation data and in making placement decisions. For example, while all of the named sources would have to be used for a child whose suspected disability is mental retardation, they would not be necessary for certain other handicapped children, such as a child who has a severe articulation disorder as his primary handicap. For such a child, the speech-language pathologist, in complying with the multisource requirement, might use (1) a standardized test of articulation, and (2) observation of the child's articulation behavior in conversational speech.

§ 300.534 Reevaluation.

Each State and local educational agency shall insure:

(a) That each handicapped child's individualized education program is reviewed in accordance with §§ 300.340-300.349 of Subpart C, and

(b) That an evaluation of the child, based on procedures which meet the requirements under § 300.532, is conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation.

(Authority: 20 U.S.C. 1412(5)(c))

ADDITIONAL PROCEDURES FOR EVALUATING SPECIFIC LEARNING DISABILITIES

§ 300.540 Additional team members.

In evaluating a child suspected of having a specific learning disability, in addition to the requirements of § 300.532, each public agency shall include on the multidisciplinary evaluation team:

(a) (1) The child's regular teacher; or

(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified by the State educational agency to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(Authority: 20 U.S.C. 1411 note)

[42 FR 65083, Dec. 29, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.541 Criteria for determining the existence of a specific learning disability.

(a) A team may determine that a child has a specific learning disability if:

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (a)(2) of this section, when provided with learning experiences appropriate for the child's age and ability levels; and

(2) The team finds that a child has a severe discrepancy between achieve-

ment and intellectual ability in one or more of the following areas:

(i) Oral expression;

(ii) Listening comprehension;

(iii) Written expression;

(iv) Basic reading skill;

(v) Reading comprehension;

(vi) Mathematics calculation; or

(vii) Mathematics reasoning.

(b) The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

(1) A visual, hearing, or motor handicap;

(2) Mental retardation;

(3) Emotional disturbance; or

(4) Environmental, cultural or economic disadvantage.

(Authority: 20 U.S.C. 1411 note)

[42 FR 65083, Dec. 29, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.542 Observation.

(a) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

(b) In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(Authority: 20 U.S.C. 1411 note)

[42 FR 65083, Dec. 29, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.543 Written report.

(a) The team shall prepare a written report of the results of the evaluation.

(b) The report must include a statement of:

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination;

(3) The relevant behavior noted during the observation of the child;

(4) The relationship of that behavior to the child's academic functioning;

(5) The educationally relevant medical findings, if any;

(6) Whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services; and

(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(c) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separage statement presenting his or her conclusions.

(Authority: 20 U.S.C. 1411 note)

[42 FR 65083, Dec. 29, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980]

LEAST RESTRICTIVE ENVIRONMENT

§ 300.550 General.

(a) Each State educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of §§ 300.550-300.556.

(b) Each public agency shall insure:

(1) That to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and

(2) That special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(Authority: 20 U.S.C. 1412(5)(B); 1414(a)(1)(C)(iv))

§ 300.551 Continuum of alternative placements.

(a) Each public agency shall insure that a continuum of alternative placements is available to meet the needs of handicapped children for special education and related services.

(b) The continuum required under paragraph (a) of this section must:

(1) Include the alternative placements listed in the definition of special education under § 300.13 of Subpart A (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions), and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

(Authority: 20 U.S.C. 1412(5)(B))

§ 300.552 Placements.

Each public agency shall insure that:

(a) Each handicapped child's educational placement: (1) Is determined at least annually,

(2) Is based on his or her individualized education program, and

(3) Is as close as possible to the child's home;

(b) The various alternative placements included under § 300.551 are available to the extent necessary to implement the individualized education program for each handicapped child;

(c) Unless a handicapped child's individualized education program requires some other arrangement, the child is educated in the school which he or she would attend if not handicapped; and

(d) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs.

(Authority: 20 U.S.C. 1412(5)(B))

Comment. Section 300.552 includes some of the main factors which must be considered in determining the extent to which a handicapped child can be educated with children who are not handicapped. The overriding rule in this section is that placement decisions must be made on an individual basis. The section also requires each agency to have various alternative placements available in order to insure that each handicapped child receives an education which is appropriate to his or her individual needs.

The analysis of the regulations for Section 504 of the Rehabilitation Act of 1973 (34 CFR Part 104—Appendix, Paragraph 24) includes several points regarding educational placements of handicapped children which are pertinent to this section:

1. With respect to determining proper placements, the analysis states: "* * * it should be stressed that, where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her needs * * *."

2. With respect to placing a handicapped child in an alternate setting, the analysis states that among the factors to be considered in placing a child is the need to place the child as close to home as possible. Recipients are required to take this factor into account in making placement decisions. The parent's right to challenge the placement of their child extends not only to placement in special classes or separate schools, but also to placement in a distant school, particularly in a residential program. An equally appropriate education program may exist closer to home; and this issue may be raised by the parent under the due process provisions of this subpart.

§ 300.553 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 300.306 of Subpart C, each public agency shall insure that each handicapped child participates with nonhandicapped children in those services and activities to the maximum extent appropriate to the needs of that child.

(Authority: 20 U.S.C. 1412(5)(B))

Comment. Section 300.553 is taken from a new requirement in the final regulations for Section 504 of the Rehabilitation Act of 1973. With respect to this requirement, the analysis of the Section 504 Regulations includes the following statement: "[A new paragraph] specifies that handicapped children must also be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children." (34 CFR Part 104—Appendix, Paragraph 24.)

§ 300.554 Children in public or private institutions.

Each State educational agency shall make arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures) as may be necessary to insure that § 300.550 is effectively implemented.

(Authority: 20 U.S.C. 1412(5)(B))

Comment. Under section 612(5)(B) of the statute, the requirement to educate handicapped children with nonhandicapped children also applies to children in public and private institutions or other care facilities. Each State educational agency must insure that each applicable agency and institution in the State implements this requirement. Regardless of other reasons for institutional placement, no child in an institution who is capable of education in a regular public school setting may be denied access to an education in that setting.

§ 300.555 Technical assistance and training activities.

Each State educational agency shall carry out activities to insure that teachers and administrators in all public agencies:

(a) Are fully informed about their responsibilities for implementing § 300.550, and

(b) Are provided with technical assistance and training necessary to assist them in this effort.

(Authority: 20 U.S.C. 1412(5)(B))

§ 300.556 Monitoring activities.

(a) The State educational agency shall carry out activities to insure that § 300.550 is implemented by each public agency.

(b) If there is evidence that a public agency makes placements that are inconsistent with § 300.550 of this subpart, the State educational agency:

(1) Shall review the public agency's justification for its actions, and

(2) Shall assist in planning and implementing any necessary corrective action.

(Authority: 20 U.S.C. 1412(5)(B))

CONFIDENTIALITY OF INFORMATION

§ 300.560 Definitions.

As used in this subpart:

"Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

"Education records" means the type of records covered under the definition of "education records" in Part 99 of this title (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

"Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained, under this part.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.561 Notice to parents.

(a) The State educational agency shall give notice which is adequate to fully inform parents about the requirements under § 300.128 of Subpart B, including:

(1) A description of the extent to which the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under section 438 of the General Education Provisions Act and Part 99 of this title (the Family Educational Rights and Privacy Act of 1974, and implementing regulations).

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.562 Access rights.

(a) Each participating agency shall permit parents to inspect and review any education records relating to their children which are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes:

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.563 Record of access.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.564 Records on more than one child.

If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.565 List of types and locations of information.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.566 Fees.

(a) A participating education agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.567 Amendment of records at parent's request.

(a) A parent who believes that information in education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child, may request the participating agency which maintains the information to amend the information.

(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request it shall inform the parent of the refusal, and advise the parent of the right to a hearing under § 300.568.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.568 Opportunity for a hearing.

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.569 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy of other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must:

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.570 Hearing procedures.

A hearing held under § 300.568 of this subpart must be conducted according to the procedures under § 99.22 of this title.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.571 Consent.

(a) Parental consent must be obtained before personally identifiable information is:

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement under this part.

(b) An educational agency or institution subject to Part 99 of this title may not release information from education records to participating agencies without parental consent unless authorized to do so under Part 99 of this title.

(c) The State educational agency shall include policies and procedures in its annual program plan which are used in the event that a parent refuses to provide consent under this section.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.572 Safeguards.

(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency shall assume responsibility for insuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under § 300.129 of Subpart B and Part 99 of this title.

(d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.573 Destruction of information.

(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

Comment. Under § 300.573, the personally identifiable information on a handicapped child may be retained permanently unless the parents request that it be destroyed. Destruction of records is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. In informing parents about their rights under this section, the agency should remind them that the records may be needed by the child or the parents for social security benefits or other purposes. If the parents request that the information be destroyed, the agency may retain the information in paragraph (b).

§ 300.574 Children's rights.

The State educational agency shall include policies and procedures in its annual program plan regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

Comment. Note that under the regulations for the Family Educational Rights and Privacy Act (45 CFR 99.4(a)), the rights of parents regarding education records are transferred to the student at age 18.

§ 300.575 Enforcement.

The State educational agency shall describe in its annual program plan the policies and procedures, including sanctions, which the State uses to insure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

§ 300.576 Department.

If the Department or its authorized representatives collect any personally identifiable information regarding handicapped children which is not subject to 5 U.S.C. 552a (The Privacy Act of 1974), the Secretary shall apply the requirements of 5 U.S.C. section 552a (b) (1)-(2), (4)-(11); (c); (d); (e)(1); (2); (3)(A), (B), and (D), (5)-(10); (h); (m); and (n), and the regulations implementing those provisions in Part 5b of this title.

(Authority: 20 U.S.C. 1412(2)(D); 1417(c))

DEPARTMENT PROCEDURES

300.580 Opportunity for a hearing.

The Secretary gives a State educational agency reasonable notice and an opportunity for a hearing before taking any of the following actions:

(a) Disapproval of a State's annual program plan under § 300.113 of Subpart B.

(b) Withholding payments from a State under § 300.590 or under section 434(c) of the General Education Provisions Act.

(c) Waiving the requirement under § 300.589 of this subpart regarding supplementing and supplanting with funds provided under Part B of the Act.

(Authority: 20 U.S.C. 1232(c); 1413(a)(9)(b); 1413(c); 1416)

EFFECTIVE DATE NOTE: Section 300.580 was removed and reserved at 51 FR 17905, May 15, 1986, effective July 23, 1986.

§ 300.581 Disapproval of a State plan.

Before disapproving a State plan, the Secretary gives the State educational agency written notice and an opportunity for a hearing.

(Authority: 20 U.S.C. 1413(c))

[51 FR 17905, May 15, 1986]

EFFECTIVE DATE NOTE: Section 300.581 was added at 51 FR 17905, May 15, 1986, effective July 23, 1986.

§ 300.582 Content of notice.

(a) In the written notice, the Secretary—

(1) States the basis on which the Secretary proposes to disapprove the State plan;

(2) May describe possible options for resolving the issues;

(3) Advises the State educational agency that it may request a hearing and that the request for a hearing must be made not later than 30 calendar days after it receives the notice of proposed disapproval; and

(4) Provides information about the procedures followed for a hearing.

(b) The Secretary sends the written notice to the State educational agency by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1413(c))

[51 FR 17905, May 15, 1986]

EFFECTIVE DATE NOTE: Section 300.582 was added at 51 FR 17905, May 15, 1986, effective July 23, 1986.

§ 300.583 Hearing official or panel.

(a) If the State educational agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of the program under this part, to conduct a hearing.

(b) If more than one individual is designated, the Secretary designates one of those individuals as the Chief Hearing Official of the Hearing Panel. If one individual is designated, that individual is the Hearing Official.

(c) If the State has an appeal pending with the Education Appeal Board on a matter arising out of the same State plan, or on the same issue arising from a prior plan, the State may contest the disapproval of its plan before the Education Appeal Board in accordance with 34 CFR Part 78.

(Authority: 20 U.S.C. 1413(c))

[51 FR 17905, May 15, 1986]

EFFECTIVE DATE NOTE: Section 300.583 was added at 51 FR 17905, May 15, 1986, effective July 23, 1986.

§ 300.584 Hearing procedures.

(a) As used in §§ 300.581—300.586 the term "party" or "parties" means the following:

(1) A State educational agency that requests a hearing regarding the proposed disapproval of its State plan under this part.

(2) The Department of Education official who administers the program of financial assistance under this part.

(3) A person, group or agency with an interest in and having relevant information about the case who has applied for and been granted leave to intervene by the Hearing Official or Panel.

(b) Within 15 calendar days after receiving a request for a hearing, the Secretary designates a Hearing Official or Panel and notifies the parties.

(c) The Hearing Official or Panel may regulate the course of proceedings and the conduct of the parties during the proceedings. The Hearing Official or Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

(1) The Hearing Official or Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of the case.

(2) The Hearing Official or Panel may schedule a prehearing conference of the Hearing Official or Panel and parties.

(3) Any party may request the Hearing Official or Panel to schedule a prehearing or other conference. The Hearing Official or Panel decides whether a conference is necessary and notifies all parties.

(4) At a prehearing or other conference, the Hearing Official or Panel and the parties may consider subjects such as—

(i) Narrowing and clarifying issues;

(ii) Assisting the parties in reaching agreements and stipulations;

(iii) Clarifying the positions of the parties;

(iv) Determining whether an evidentiary hearing or oral argument should be held;

(v) Setting dates for—

(A) The exchange of written documents;

(B) The receipt of comments from the parties on the need for oral argument or evidentiary hearing;

(C) Further proceedings before the Hearing Official or Panel (including an evidentiary hearing or oral argument, if either is scheduled);

(D) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and estimation of time for each presentation; or

(E) Completion of the review and the initial decision of the Hearing Official or Panel.

(5) A prehearing or other conference held under paragraph (b)(4) of this section may be conducted by telephone conference call.

(6) At a prehearing or other conference, the parties shall be prepared to discuss the subjects listed in paragraph (b)(4) of this section.

(7) Following a prehearing or other conference the Hearing Official or Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.

(d) The Hearing Official or Panel may require parties to state their positions and to provide all or part of the evidence in writing.

(e) The Hearing Official or Panel may require parties to present testimony through affidavits and to conduct cross-examination through interrogatories.

(f) The Hearing Official or Panel may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the Hearing Official or Panel.

(g) The Hearing Official or Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

(h) The Hearing Official or Panel may rule on motions and other issues at any stage of the proceedings.

(i) The Hearing Official or Panel may examine witnesses.

(j) The Hearing Official or Panel may set reasonable time limits for submission of written documents.

(k) The Hearing Official or Panel may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown.

(l) The Hearing Official or Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.

(m)(1) The parties shall present their positions through briefs and the submission of other documents and may request an oral argument or evidentiary hearing. The Hearing Official or Panel shall determine whether an oral argument or an evidentiary hearing is needed to clarify the positions of the parties.

(2) The Hearing Official or Panel gives each party an opportunity to be represented by counsel.

(n) If the Hearing Official or Panel determines that an evidentiary hearing would materially assist the resolution of the matter, the Hearing Official or Panel gives each party, in addition to the opportunity to be represented by counsel—

(1) An opportunity to present witnesses on the party's behalf; and

(2) An opportunity to cross-examine witnesses either orally or with written questions.

(o) The Hearing Official or Panel accepts any evidence that it finds is relevant and material to the proceedings and is not unduly repetitious.

(p)(1) The Hearing Official or Panel—

(i) Arranges for the preparation of a transcript of each hearing;

(ii) Retains the original transcript as part of the record of the hearing; and

(iii) Provides one copy of the transcript to each party.

(2) Additional copies of the transcript are available on request and with payment of the reproduction fee.

(q) Each party shall file with the Hearing Official or Panel all written motions, briefs, and other documents and shall at the same time provide a copy to the other parties to the proceedings.

(Authority: 20 U.S.C. 1413(c))

[51 FR 17905, May 15, 1986]

EFFECTIVE DATE NOTE: Section 300.584 was added at 51 FR 17905, May 15, 1986, effective July 23, 1986.

§ 300.585 Initial decision; final decision.

(a) The Hearing Official or Panel prepares an initial written decision which addresses each of the points in the notice sent by the Secretary to the State educational agency under § 300.582.

(b) The initial decision of a Panel is made by a majority of Panel members.

(c) The Hearing Official or Panel mails by certified mail with return receipt requested a copy of the initial decision to each party (or to the party's counsel) and to the Secretary, with a notice stating that each party has an opportunity to submit written comments regarding the decision to the Secretary.

(d) Each party may file comments and recommendations on the initial decision with the Hearing Official or Panel within 15 calendar days of the date the party receives the Panel's decision.

(e) The Hearing Official or Panel sends a copy of a party's initial comments and recommendations to the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Hearing Official or Panel within seven calendar days of the date the party receives the initial comments and recommendations.

(f) The Hearing Official or Panel forwards the parties' initial and responsive comments on the initial decision to the Secretary who reviews the initial decision and issues a final decision.

(g) The initial decision of the Hearing Official or Panel becomes the final decision of the Secretary unless, within 25 calendar days after the end of the time for receipt of written comments, the Secretary informs the Hearing Official or Panel and the parties to a hearing in writing that the decision is being further reviewed for possible modification.

(h) The Secretary may reject or modify the initial decision of the Hearing Official or Panel if the Secretary finds that it is clearly erroneous.

(i) The Secretary conducts the review based on the initial decision, the written record, the Hearing Official's or Panel's proceedings, and written comments. The Secretary may remand the matter for further proceedings.

(j) The Secretary issues the final decision within 30 calendar days after notifying the Hearing Official or Panel that the initial decision is being further reviewed.

[51 FR 17906, May 15, 1986]

EFFECTIVE DATE NOTE: Section 300.585 was added at 51 FR 17906, May 15, 1986, effective July 23, 1986.

§ 300.586 Judicial review.

If a State is dissatisfied with the Secretary's final action with respect to its State plan, the State may, within 60 calendar days after notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located.

(Authority: 20 U.S.C. 1416(b)(1))

[51 FR 17906, May 15, 1986]

EFFECTIVE DATE NOTE: Section 300.586 was added at 51 FR 17906, May 15, 1986, effective July 23, 1986.

§§ 300.587—300.588 [Reserved]

§ 300.589 Waiver of requirement regarding supplementing and supplanting with Part B funds.

(a) Under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act, State and local educational agencies must insure that Federal funds provided under Part B of the Act are used to supplement the level of State and local funds expended for the education of handicapped children, and in no case to supplant those State and local funds. Beginning with funds appropriated for fiscal year 1979 and for each following fiscal year, the nonsupplanting requirement only applies to funds allocated to local educational agencies. (See § 300.372.)

(b) If the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Secretary may waive in part the requirement under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act if the Secretary concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver, it must inform the Secretary in writing. The Secretary then provides the State with a finance and membership report form which provides the basis for the request.

(d) In its request for a waiver, the State shall include the results of a special study made by the State to obtain evidence of the availability of a free appropriate public education to all handicapped children. The special study must include statements by a representative sample of organizations which deal with handicapped children, and parents and teachers of handicapped children, relating to the following areas:

(1) The adequacy and comprehensiveness of the State's system for locating, identifying, and evaluating handicapped children, and

(2) The cost to parents, if any, for education for children enrolled in public and private day schools, and in public and private residential schools and institutions, and

(3) The adequacy of the State's due process procedures.

(e) In its request for a waiver, the State shall include finance data relating to the availability of a free appropriate public education for all handicapped children, including:

(1) The total current expenditures for regular education programs and special education programs by function and by source of funds (State, local, and Federal) for the previous school year, and

(2) The full-time equivalent membership of students enrolled in regular programs and in special programs in the previous school year.

(f) The Secretary considers the information which the State provides under paragraphs (d) and (e) of this section, along with any additional information he may request, or obtain through on-site reviews of the State's education programs and records, to determine if all children have available to them a free appropriate public education, and if so, the extent of the waiver.

(g) The State may request a hearing with regard to any final action by the Secretary under this section.

(Authority: 20 U.S.C. 1411(c)(3); 1413(a)(9)(B))

[42 FR 42476, Aug. 23, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980 and amended at 51 FR 17906, May 15, 1986]

EFFECTIVE DATE NOTE: Section 300.589(g) was revised at 51 FR 17906, May 15, 1986, effective July 23, 1986. For the convenience of the reader, the superseded text is set forth below.

§ 300.589 Waiver of requirement regarding supplementing and supplanting with Part B funds.

* * * * *

(g) The State may request a hearing under §§ 300.580—300.583 with regard to any final action by the Secretary under this section.

Subpart F—State Administration

STATE EDUCATIONAL AGENCY RESPONSIBILITIES: GENERAL

§ 300.600 Responsibility for all educational programs.

(a) The State educational agency is responsible for insuring:

(1) That the requirements of this part are carried out; and

(2) That each educational program for handicapped children administered within the State, including each program administered by any other public agency:

(i) Is under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency, and

(ii) Meets education standards of the State educational agency (including the requirements of this part).

(b) The State must comply with paragraph (a) of this section through State statute, State regulation, signed agreement between respective agency officials, or other documents.

(Authority: 20 U.S.C. 1412(6))

Comment. The requirement in § 300.600(a) is taken essentially verbatim from section 612(6) of the statute and reflects the desire of the Congress for a central point of responsibility and accountability in the education of handicapped children within each State. With respect to State educational agency responsibility, the Senate Report on Pub. L. 94-142 includes the following statements:

> This provision is included specifically to assure a single line of responsibility with regard to the education of handicapped children, and to assure that in the implementation of all provisions of this Act and in carrying out the right to education for handicapped children, the State educational agency shall be the responsible agency * * *.
>
> Without this requirement, there is an abdication of responsibility for the education of handicapped children. Presently, in many States, responsibility is divided, depending upon the age of the handicapped child, sources of funding, and type of services delivered. While the Committee understands that different agencies may, in fact, deliver services, the responsibility must remain in a central agency overseeing the education of handicapped children, so that failure to deliver services or the violation of the rights of handicapped children is squarely the responsibility of one agency. (Senate Report No. 94-168, p. 24 (1975))

In meeting the requirements of this section, there are a number of acceptable options which may be adopted, including the following:

(1) Written agreements are developed between respective State agencies concerning State educational agency standards and monitoring. These agreements are binding on the local or regional counterparts of each State agency.

(2) The Governor's Office issues an administrative directive establishing the State educational agency responsibility.

(3) State law, regulation, or policy designates the State educational agency as responsible for establishing standards for all educational programs for the handicapped, and includes responsibility for monitoring.

(4) State law mandates that the State educational agency is responsible for all educational programs.

USE OF FUNDS

§ 300.620 Federal funds for State administration.

A State may use five percent of the total State allotment in any fiscal year under Part B of the Act, or $350,000, whichever is greater, for administrative costs related to carrying out sections 612 and 613 of the Act. However, this amount cannot be greater than twenty-five percent of the State's total allotment for the fiscal year under Part B of the Act.

(Authority: 20 U.S.C. 1411 (b), (c))

[51 FR 19311, May 28, 1986]

EFFECTIVE DATE NOTE: Section 300.620 was revised at 51 FR 19311, May 28, 1986, effective July 23, 1986. For the convenience of the reader, the superseded text is set forth below.

§ 300.620 Federal funds for State administration.

A State may use five percent of the total State allotment in any fiscal year under Part B of the Act, or $200,000, whichever is greater, for administrative costs related to carrying out sections 612 and 613 of the Act. However, this amount cannot be greater than the amount which the State may use under § 300.704 or § 300.705, as the case may be.

(Authority: 20 U.S.C. 1411 (b), (c))

§ 300.621 Allowable costs.

(a) The State educational agency may use funds under § 300.620 of this subpart for:

(1) Administration of the annual program plan and for planning at the State level, including planning, or assisting in the planning, of programs or projects for the education of handicapped children;

(2) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of handicapped children;

(3) Technical assistance to local educational agencies with respect to the requirements of this part;

(4) Leadership services for the program supervision and management of special education activities for handicapped children; and

(5) Other State leadership activities and consultative services.

(b) The State educational agency shall use the remainder of its funds under § 300.620 in accordance with § 300.370 of Subpart C.

(Authority: 20 U.S.C. 1411 (b), (c))

STATE ADVISORY PANEL

§ 300.650 Establishment.

(a) Each State shall establish, in accordance with the provisions of this subpart, a State advisory panel on the education of handicapped children.

(b) The advisory panel must be appointed by the Governor or any other official authorized under State law to make those appointments.

(c) If a State has an existing advisory panel that can perform the functions in § 300.652, the State may modify the existing panel so that it fulfills all of the requirements of this subpart, instead of establishing a new advisory panel.

(Authority: 20 U.S.C. 1413(a)(12))

§ 300.651 Membership.

(a) The membership of the State advisory panel must be composed of persons involved in or concerned with the education of handicapped children. The membership must include at least one person representative of each of the following groups:

(1) Handicapped individuals.

(2) Teachers of handicapped children.

(3) Parents of handicapped children.

(4) State and local educational officials.

(5) Special education program administrators.

(b) The State may expand the advisory panel to include additional persons in the groups listed in paragraph (a) of this section and representatives of other groups not listed.

(Authority: 20 U.S.C. 1413(a)(12))

Comment. The membership of the State advisory panel, as listed in paragraphs (a) (1)-(5), is required in section 613(a)(12) of the Act. As indicated in paragraph (b), the composition of the panel and the number of members may be expanded at the discretion of the State. In adding to the membership, consideration could be given to having:

(1) An appropriate balance between professional groups and consumers (i.e., parents, advocates, and handicapped individuals);

(2) Broad representation within the consumer-advocate groups, to insure that the interests and points of view of various parents, advocates and handicapped individuals are appropriately represented;

(3) Broad representation within professional groups (e.g., (a) regular education personnel, (b) special educators, including teachers, teacher trainers, and administrators, who can properly represent various dimensions in the education of handicapped children, and (c) appropriate related services personnel); and

(4) Representatives from other State advisory panels (such as vocational education).

If a State elects to maintain a small advisory panel (e.g., 10-15 members), the panel itself could take steps to insure that it (1) consults with and receives inputs from various consumer and special interest professional groups, and (2) establishes committees for particular short-term purposes composed of representatives from those input groups.

§ 300.652 Advisory panel functions.

The State advisory panel shall:

(a) Advise the State educational agency of unmet needs within the State in the education of handicapped children;

(b) Comment publicly on the State annual program plan and rules or regulations proposed for issuance by the State regarding the education of handicapped children and the procedures for distribution of funds under this part; and

(c) Assist the State in developing and reporting such information and evaluations as may assist the Secretary in the performance of his responsibilities under section 618.

(Authority: 20 U.S.C. 1413(a)(12))

§ 300.653 Advisory panel procedures.

(a) The advisory panel shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the State educational agency. This report must be made available to the public in a manner consistent with other public reporting requirements under this part.

(c) Official minutes must be kept on all panel meetings and shall be made available to the public on request.

(d) All advisory panel meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

(e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The State may pay for these services from funds under § 300.620.

(f) The advisory panel shall serve without compensation but the State must reimburse the panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use funds under § 300.620 for this purpose.

(Authority: 20 U.S.C. 1413(a)(12))

Subpart G—Allocation of Funds; Reports

ALLOCATIONS

§ 300.700 Special definition of the term State.

For the purposes of § 300.701, § 300.702, and §§ 300.704-300.708, the term "State" does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(Authority: 20 U.S.C. 1411(a)(2))

§ 300.701 State entitlement; formula.

(a) The maximum amount of the grant to which a State is entitled under section 611 of the Act in any fiscal year is equal to the number of handicapped children aged three through 21 in the State who are receiving special education and related services, multiplied by the applicable percentage, under paragraph (b) of this section, of the average per pupil expenditure in public elementary and secondary schools in the United States.

(b) For the purposes of the formula in paragraph (a) of this section, the applicable percentage of the average per pupil expenditure in public elementary and secondary schools in the United States for each fiscal year is:

(1) 1978—5 percent,
(2) 1979—10 percent,
(3) 1980—20 percent,
(4) 1981—30 percent, and
(5) 1982, and for each fiscal year after 1982, 40 percent.

(Authority: 20 U.S.C. 1411(a)(1))

(c) For the purposes of this section, the average per pupil expenditure in public elementary and secondary schools in the United States, means the aggregate expenditures during the second fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the United States (which, for the purpose of this section, means the fifty States and the District of Columbia), plus any direct expenditures by the State for operation of those agencies (without regard to the source of funds from which either of those expenditures are made), divided by the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(Authority: 20 U.S.C. 1411(a)(4))

§ 300.702 Limitations and exclusions.

(a) In determining the amount of a grant under § 300.701 of this subpart, the Secretary may not count:

(1) Handicapped children in a State to the extent that the number of those children is greater than 12 percent of the number of all children aged five through 17 in the State; and

(2) [Reserved]

(3) Handicapped children who are counted under section 121 of the Elementary and Secondary Education Act of 1965.

(b) For the purposes of paragraph (a) of this section, the number of children aged five through 17 in any State shall be determined by the Secretary on the basis of the most recent satisfactory data available to him.

(Authority: 20 U.S.C. 1411(a)(5))

[42 FR 42476, Aug. 23, 1977, as amended at 42 FR 65083, Dec. 29, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.703 Ratable reductions.

(a) *General.* If the sums appropriated for any fiscal year for making payments to States under section 611 of the Act are not sufficient to pay in full the total amounts to which all States are entitled to receive for that fiscal year, the maximum amount which all States are entitled to receive for that fiscal year shall be ratably reduced. In case additional funds become available for making payments for any fiscal year during which the preceding sentence is applicable, those reduced amounts shall be increased on the same basis they were reduced.

(Authority: 20 U.S.C. 1411(g)(1))

(b) *Reporting dates for local educational agencies and reallocations.* (1) In any fiscal year in which the State entitlements have been ratably reduced, and in which additional funds have not been made available to pay in full the total of the amounts under paragraph (a) of this section, the State educational agency shall fix dates before which each local educational agency shall report to the State the amount of funds available to it under this part which it estimates it will expend.

(2) The amounts available under paragraph (a)(1) of this section, or any amount which would be available to any other local educational agency if it were to submit an application meeting the requirements of this part, which the State educational agency determines will not be used for the period of its availability, shall be available for allocation to those local educational agencies, in the manner provided in § 300.707, which the State educational agency determines will need and be able to use additional funds to carry out approved programs.

(Authority: 20 U.S.C. 1411(g)(2))

§ 300.704 Hold harmless provision.

No State shall receive less than the amount it received under Part B of the Act for fiscal year 1977.

(Authority: 20 U.S.C. 1411(a)(1))

§ 300.705 Allocation for State in which bypass is implemented for private school handicapped children.

In determining the allocation under §§ 300.700-300.703 of a State in which the Secretary will implement a by-pass for private school handicapped children under §§ 300.451-300.486, the Secretary includes in the State's child count—

(a) For the first year of a by-pass, the actual or estimated number of private school handicapped children (as defined in §§ 300.5(a) and 300.450 in the State, as of the preceding December 1; and

(b) For succeeding years of a by-pass, the number of private school handicapped children who received special education and related services under the by-pass in the preceding year.

(Authority: 20 U.S.C. 1411(a)(1)(A), 1411(a)(3), 1413(d))

[49 FR 48526, Dec. 12, 1984]

§ 300.706 Within-State distribution: Fiscal year 1979 and after.

Of the funds received under § 300.701 by any State for fiscal year 1979, and for each fiscal year after fiscal year 1979:

(a) 25 percent may be used by the State in accordance with § 300.620 of Subpart F and § 300.370 of Subpart C, and

(b) 75 percent shall be distributed to the local educational agencies in the State in accordance with § 300.707.

(Authority: 20 U.S.C. 1411(c)(1))

§ 300.707 Local educational agency entitlements; formula.

From the total amount of funds available to all local educational agencies, each local educational agency is entitled to an amount which bears the same ratio to the total amount as the number of handicapped children aged three through 21 in that agency who are receiving special education and related services bears to the aggregate number of handicapped children aged three through 21 receiving special education and related services in all local educational agencies which apply to the State educational agency for funds under Part B of the Act.

(Authority: 20 U.S.C. 1411(d))

§ 300.708 Reallocation of local educational agency funds.

If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all handicapped children residing in the area served by the local agency with State and local funds otherwise available to the local agency, the State educational agency may reallocate funds (or portions of those funds which are not required to provide special education and related services) made available to the local agency under § 300.707, to other local educational agencies within the State which are not adequately providing special education and related services to all handicapped children residing in the areas served by the other local educational agencies.

(Authority: 20 U.S.C. 1414(e))

§ 300.709 Payments to Secretary of Interior.

(a) The Secretary is authorized to make payments to the Secretary of the Interior according to the need for that assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior.

(b) The amount of those payments for any fiscal year shall not exceed one percent of the aggregate amounts available to all States for that fiscal year under Part B of the Act.

(Authority: 20 U.S.C. 1411(f)(1))

§ 300.710 Entitlements to jurisdictions.

(a) The jurisdictions to which this section applies are Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(b) Each jurisdiction under paragraph (a) of this section is entitled to a grant for the purposes set forth in section 601(c) of the Act. The amount to which those jurisdictions are so entitled for any fiscal year shall not exceed an amount equal to 1 percent of the aggregate of the amounts available to all States under this part for that fiscal year. Funds appropriated for those jurisdictions shall be allocated proportionately among them on the basis of the number of children aged three through twenty-one in each jurisdiction. However, no jurisdiction shall receive less than $150,000, and other allocations shall be ratably reduced if necessary to insure that each jurisdiction receives at least that amount.

(c) The amount expended for administration by each jurisdiction under this section shall not exceed 5 percent of the amount allotted to the jurisdiction for any fiscal year, or $35,000, whichever is greater.

(Authority: 20 U.S.C. 1411(e))

REPORTS

§ 300.750 Annual report of children served—report requirement.

(a) The State educational agency shall report to the Secretary no later than February 1 of each year the number of handicapped children aged three through 21 residing in the State who are receiving special education and related services.

(Authority: 20 U.S.C. 1411(a)(3))

(b) The State educational agency shall submit the report on forms provided by the Secretary.

(Authority: 20 U.S.C. 1411(a)(3))

Comment. It is very important to understand that this report and the requirements that relate to it are solely for allocation purposes. The population of children the State may count for allocation purposes may differ from the population of children to whom the State must make available a free appropriate public education. For example, while section 611(a)(5) of the Act limits the number of children who may be counted for allocation purposes to 12 percent of the general school population aged five through seventeen, a State might find that 14 percent (or some other percentage) of its children are handicapped. In that case, the State must make free appropriate public education available to all of those handicapped children.

[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 7551, Feb. 4, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 300.751 Annual report of children served—information required in the report.

(a) In its report, the State educational agency shall include a table which shows:

(1) The number of handicapped children receiving special education and related services on December 1 of that school year;

(2) The number of those handicapped children within each disability category, as defined in the definition of "handicapped children" in § 300.5 of Subpart A; and

(3) The number of those handicapped children aged three through twenty-one for each year of age (three, four, five, etc.). For fiscal year 1985, a State educational agency that does not currently collect information in this manner may report the number of those handicapped children within each of the following age groups:

(i) Three through five.

(ii) Six through eleven.

(iii) Twelve through seventeen.

(iv) Eighteen through twenty-one.

(b) For the purpose of this part, a child's age is the child's actual age on the date of the child count: December 1.

(c) The State educational agency may not report a child under more than one disability category.

(d) If a handicapped child has more than one disability, the State educational agency shall report that child in accordance with the following procedure:

(1) A child who is both deaf and blind must be reported as "deaf-blind."

(2) A child who has more than one disability (other than a deaf-blind child) must be reported as "multihandicapped."

(The information collection requirements contained in paragraphs (a)(3) and (b) were approved by the Office of Management and Budget under control number 1820-0043)

(Authority: 20 U.S.C. 1411(a)(3); 1411(a)(5)(A)(ii); 1418(b))

[42 FR 42476, Aug. 23, 1977, as amended at 45 FR 7551, Feb. 4, 1980. Redesignated at 45

FR 77368, Nov. 21, 1980; 49 FR 48525, Dec. 12, 1984]

§ 300.752 Annual report of children served—certification.

The State educational agency shall include in its report a certification signed by an authorized official of the agency that the information provided is an accurate and unduplicated count of handicapped children receiving special education and related services on the dates in question.

(Authority: 20 U.S.C. 1411(a)(3); 1417(b))

§ 300.753 Annual report of children served—criteria for counting children.

(a) The State educational agency may include handicapped children in its report who are enrolled in a school or program which is operated or supported by a public agency, and which either:

(1) Provides them with both special education and related services; or

(2) Provides them only with special education if they do not need related services to assist them in benefitting from that special education.

(b) The State educational agency may not include handicapped children in its report who:

(1) Are not enrolled in a school or program operated or supported by a public agency;

(2) Are not provided special education that meets State standards;

(3) Are not provided with a related service that they need to assist them in benefitting from special education;

(4) Are counted by a State agency under section 121 of the Elementary and Secondary Education Act of 1965, as amended; or

(5) Are receiving special education funded solely by the Federal Government. However, the State may count children covered under § 300.186(b) of Subpart B.

(Authority: 20 U.S.C. 1411(a)(3); 1417(b))

Comment. 1. Under paragraph (a), the State may count handicapped children in a Head Start or other preschool program operated or supported by a public agency if those children are provided special education that meets State standards.

2. "Special education," by statutory definition, must be at no cost to parents. As of September 1, 1978, under the free appropriate public education requirement, both special education and related services must be at no cost to parents.

There may be some situations, however, where a child receives special education from a public source at no cost, but whose parents pay for the basic or regular education. This child may be counted. The Department expects that there would only be limited situations where special education would be clearly separate from regular education—generally, where speech therapy is the only special education required by the child. For example, the child might be in a regular program in a parochial or other private school but receiving speech therapy in a program funded by the local educational agency. Allowing these children to be counted will provide incentives (in addition to complying with the legal requirement in section 613(a)(4)(A) of the Act regarding private schools) to public agencies to provide services to children in private schools, since funds are generated in part on the basis of the number of children provided special education and related services. Agencies should understand, however, that where a handicapped child is placed in or referred to a public or private school for educational purposes, special education includes the entire educational program provided to the child. In that case, parents may not be charged for any part of the child's education.

A State may not count Indian children on or near reservations and children on military facilities if it provides them no special education. If a State or local educational agency is responsible for serving these children, and does provide them special education and related services, they may be counted.

§ 300.754 Annual report of children served—other responsibilities of the State educational agency.

In addition to meeting the other requirements in this subpart, the State educational agency shall:

(a) Establish procedures to be used by local educational agencies and other educational institutions in counting the number of handicapped children receiving special education and related services;

(b) Set dates by which those agencies and institutions must report to the State educational agency to insure that the State complies with § 300.750(a);

(c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;

(d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under this subpart; and

(e) Insure that documentation is maintained which enables the State and the Secretary to audit the accuracy of the count.

(Authority: 20 U.S.C. 1411(a)(3); 1417(b))

Comment. States should note that the data required in the annual report of children served are not to be transmitted to the Secretary in personally identifiable form. States are encouraged to collect these data in non-personally identifiable form.

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General requirements—§§ 300.550-300.556.
Local application requirement—§ 300.227.
Nature and location of State services—§ 300.361.
Nonacademic services and settings—§§ 300.306; 300.553.
Physical education—§ 300.307.
Placement decisions—§§ 300.513; 300.533.
Program options—§ 300.305.

MATCHING—§ 300.371

MONITORING

Annual program plan requirements—§§ 300.128(b)(5); 300.130(b)(2); 300.135.
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Confidentiality of information—§ 300.575.
Identification, location, evaluation—§ 300.128(b)(5).
Individualized education programs—§ 300.130(b)(2).
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Handicapped children placed or referred by public agencies—§§ 300.400-300.403.
Handicapped children not placed or referred by public agencies—§§ 300.450-300.460.
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Comparable services—§ 300.231.
Count of children served—§ 300.754.
Excess costs—§ 300.183.
Individualized education programs—§ 300.130.
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Parents may examine—§§ 300.502; 300.562.
Parents not participating in meetings—§ 300.345.

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  Individualized Education Program.
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SPECIAL EDUCATION

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  Individualized Education Program.
Defined—§ 300.14.

STATE ADVISORY PANEL

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General requirements—§§ 300.650-300.653.

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  Full educational opportunity goal—§ 300.304(b).
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APPENDIX C—NOTICE OF INTERPRETATION

I. Purpose of the IEP
II. IEP Requirements

§ 300.340 Definition

§ 300.341 State educational agency responsibility

1. Who is responsible for ensuring the development of IEPs for handicapped children served by a public agency other than an LEA?

2. For a child placed out of State by a public agency, is the placing or receiving State responsible for the child's IEP?

§ 300.342 When individualized education programs must be in effect

3. In requiring that an IEP be in effect before special education and related services are provided, what does "be in effect" mean?

4. How much of a delay is permissible between the time a handicapped child's IEP is finalized and when special education is provided?

5. For a handicapped child receiving special education for the first time, when must an IEP be developed—before placement or after placement?

6. If a handicapped child has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?

§ 300.343 Meetings

7. What is the purpose of the 30 day timeline in § 300.343(c)?

8. Must the agency hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?

9. Must IEPs be reviewed or revised at the beginning of each school year?

10. How frequently must IEP meetings be held and how long should they be?

11. Who can initiate IEP meetings?

12. May IEP meetings be tape-recorded?

§ 300.344 Participants in meetings

(Agency representative)

13. Who can serve as the "representative of the public agency" at an IEP meeting?

14. Who is the "representative of the public agency" if a handicapped child is served by a public agency other than the SEA or LEA?

(The child's teacher)

15. For a handicapped child being considered for initial placement in special education, which teacher should attend the IEP meeting?

16. If a handicapped child is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?

17. If a handicapped child in high school attends several regular classes, must all of the child's regular teachers attend the IEP meeting?

18. If a child's primary handicap is a speech impairment, must the child's regular teacher attend the IEP meeting?

19. If a child is enrolled in a special education class because of a primary handicap and also receives speech-language pathology services, must both specialists attend the IEP meeting?

(The child, parents, other individuals)

20. When may representatives of teacher organizations attend IEP meetings?

21. When may a handicapped child attend an IEP meeting?

22. Do the parents of a handicapped student retain the right to attend the IEP meeting when the student reaches the age of majority?

23. Must related services personnel attend IEP meetings?

24. Are agencies required to use a case manager in the development of a handicapped child's IEP?

25. For a child with a suspected speech impairment, who must represent the evaluation team at the IEP meeting?

§ 300.345 Parent participation

26. What is the role of the parents at an IEP meeting?

27. What is the role of a surrogate parent at an IEP meeting?

28. Must the public agency let the parents know who will be at the IEP meeting?

29. Are parents required to sign IEPs?

30. If the parent signs the IEP, does the signature indicate consent for initial placement?

31. Do parents have the right to a copy of their child's IEP?

32. Must parents be informed at the IEP meeting of their right to appeal?

33. Does the IEP include ways for parents to check the progress of their children?

34. Must IEPs include specific "checkpoint intervals" for parents to confer with teachers and to revise or update their children's IEPs?

35. If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?

§ 300.346 *Content of the individualized education program*

(Present levels of educational performance)

36. What should be included in the statement of the child's present levels of educational performance?

(Annual goals and short term objectives)

37. Why are goals and objectives required in the IEP?

38. What are "annual goals" in an IEP?

39. What are "short term instructional objectives" in an IEP?

40. Should the IEP goals and objectives focus only on special education and related services, or should they relate to the total education of the child?

41. Should there be a relationship between the goals and objectives in the IEP and those that are in instructional plans of special education personnel?

42. When must IEP objectives be written—before placement or after placement?

43. Can short term instructional objectives be changed without initiating another IEP meeting?

(Specific special education and related services)

44. Must the IEP include all special education and related services needed by the child or only those available from the public agency?

45. Is the IEP a commitment to provide services—i.e., must a public agency provide all of the services listed in the IEP?

46. Must the public agency itself directly provide the services set out in the IEP?

47. Does the IEP include only special education and related services or does it describe the total education of the child?

48. If modifications are necessary for a handicapped child to participate in a regular education program, must they be included in the IEP?

49. When must physical education (PE) be described or referred to in an IEP?

50. If a handicapped child is to receive vocational education, must it be described or referred to in the student's IEP?

51. Must the IEP specify the amount of services or may it simply list the services to be provided?

52. Must a handicapped child's IEP indicate the extent to which the child will be educated in the regular educational program?

(Projected dates/Evaluation)

53. Can the anticipated duration of services be for more than twelve months?

54. Must the evaluation procedures and schedules be included as a separate item in the IEP?

(Other IEP content questions)

55. Is it permissible for an agency to have the IEP completed when the IEP meeting begins?

56. Is there a prescribed format or length for an IEP?

57. Is it permissible to consolidate the IEP with the individualized service plan developed under another Federal program?

58. What provisions on confidentiality of information apply to IEPs?

§ 300.347 *Private school placements*

59. If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?

§ 300.348 *Handicapped children in parochial or other private schools*

§ 300.349 *Individualized education programs—accountability*

60. Is the IEP a performance contract?

AUTHORITY: Part B of the Education of the Handicapped Act, as amended (20 U.S.C. 1411-1420), unless otherwise noted.

INDIVIDUALIZED EDUCATION PROGRAMS (IEPs)

Interpretation of Requirements Under Part B of the Education of the Handicapped Act, As Amended by Pub. L. 94-142

I. Purpose of the IEP

There are two main parts of the IEP requirement, as described in the Act and regulations: (1) The IEP meeting(s), at which parents and school personnel jointly make decisions about a handicapped child's educational program, and (2) the IEP document itself, which is a written record of the decisions reached at the meeting. The overall IEP requirement, comprised of these two parts, has a number of purposes and functions:

a. The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide what the child's needs are, what services will be provided to meet those needs, and what the anticipated outcomes may be.

b. The IEP process provides an opportunity for resolving any differences between the parents and the agency concerning a handicapped child's special education needs; first, through the IEP meeting, and second, if necessary, through the procedural protections that are available to the parents.

c. The IEP sets forth in writing a commitment of resources necessary to enable a handicapped child to receive needed special education and related services.

d. The IEP is a management tool that is used to ensure that each handicapped child is provided special education and related services appropriate to the child's special learning needs.

e. The IEP is a compliance/monitoring document which may be used by authorized monitoring personnel from each governmental level to determine whether a handicapped child is actually receiving the free appropriate public education agreed to by the parents and the school.

f. The IEP serves as an evaluation device for use in determining the extent of the child's progress toward meeting the projected outcomes.

NOTE: The Act does not require that teachers or other school personnel be held accountable if a handicapped child does not achieve the goals and objectives set forth in the IEP. See § 300.349, *Individualized education program—accountability.*

II. IEP Requirements

This part (1) repeats the IEP requirements in §§ 300.340–300.349 of the regulations (boxed material), (2) provides additional clarification, as necessary, on sections or paragraphs of the regulations on which such clarification is needed, and (3) answers some questions regarding implementation of the IEP requirements that are not expressly addressed in the regulations. These questions and clarifying information are presented in a question and answer format immediately after the particular section of the regulations that is presented.

INDIVIDUALIZED EDUCATION PROGRAMS

§ 300.340 Definition.

As used in this part, the term "individualized education program" means a written statement for a handicapped child that is developed and implemented in accordance with §§ 300.341-300.349.

(20 U.S.C. 1401(19).)

§ 300.341 State educational agency responsibility.

(a) *Public agencies.* The State educational agency shall insure that each public agency develops and implements an individualized education program for each of its handicapped children.

(b) *Private schools and facilities.* The State educational agency shall insure that an individualized education program is developed and implemented for each handicapped child who:

(1) Is placed in or referred to a private school or facility by a public agency; or

(2) Is enrolled in a parochial or other private school and receives special education or related services from a public agency.

(20 U.S.C. 1412 (4), (6); 1413(a)(4).)

***Comment:* This section applies to all public agencies, including other State agencies (e.g., departments of mental health and welfare), which provide special education to a handicapped child either directly, by contract or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a handicapped child, that agency would be responsible for insuring that an individualized education program is developed for the child.**

1. *Who is responsible for ensuring the development of IEPs for handicapped children served by a public agency other than an LEA?*

The answer will vary from State to State, depending upon State law, policy, or practice. In each State, however, the SEA is ultimately responsible for ensuring that each agency in the State is in compliance with the IEP requirements and the other provisions of the Act and regulations. (See § 300.600 regarding SEA responsibility for all education programs.)

The SEA must ensure that every handicapped child in the State has available a free appropriate public education (FAPE), regardless of which agency, State or local, is responsible for the child. While the SEA has flexibility in deciding the best means to meet this obligation (e.g., through interagency agreements), there can be no failure to provide FAPE due to jurisdictional disputes among agencies.

NOTE: Section 300.2(b) states that the requirements of the Act and regulations apply to all political subdivisions of the State that are involved in the education of handicapped children, including (1) the SEA, (2) LEAs, (3) other State agencies (such as Departments of Mental Health and Welfare, and State schools for the deaf or blind), and (4) State correctional facilities.

The following paragraphs outline (1) some of the SEA's responsibilities for developing policies or agreements under a variety of interagency situations, and (2) some of the responsibilities of an LEA when it initiates the placement of a handicapped child in a school or program operated by another State agency:

a. *SEA POLICIES OR INTERAGENCY AGREEMENTS.* The SEA, through its written policies or agreements, must ensure that IEPs are properly written and implemented for all handicapped children in the State. This applies to each interagency situation that exists in the State, including any of the following:

(1) When an LEA initiates the placement of a child in a school or program operated by another State agency (see "LEA-Initiated Placements" in paragraph "b", below); (2) when a State or local agency other than the SEA or LEA places a child in a residential facility or other program; (3) when parents initiate placements in public institutions; and (4) when the courts make placements in correctional facilities.

NOTE: This is not an exhaustive list. The SEA's policies must cover any other interagency situation that is applicable in the State, including placements that are made for both educational and for non-educational purposes.

Frequently, more than one agency is involved in developing or implementing a handicapped child's IEP (e.g., when the LEA remains responsible for the child, even though another public agency provides the special education and related services, or when there are shared cost arrangements). It is important that SEA policies or agreements define the role of each agency involved in the situations described above, in order to resolve any jurisdictional problems that could delay the provision of a free appropriate public education to a handicapped child. For example, if a child is placed in a residential facility, any one or all of the following agencies might be involved in the development and/or implementation of the child's IEP: The child's LEA, the SEA, another State agency, an institution or school under that agency, and the LEA where the institution is located.

NOTE: The SEA must also ensure that any agency involved in the education of a handicapped child is in compliance with the "least restrictive environment" provisions of the Act and regulations, and, specifically, with the requirement that each handicapped child's placement (1) be determined at least annually, (2) be based on the child's IEP, and (3) be as close as possible to the child's home (§ 300.552(a), *Placements.*)

b. *LEA-INITIATED PLACEMENTS.* When an LEA is responsible for the education of a handicapped child, the LEA is also responsible for developing the child's IEP. The LEA has this responsibility even if development of the IEP results in placement in a State-operated school or program.

NOTE: The IEP must be developed before the child is placed. See Question 5, below.) When placement in a State-operated school is necessary, the affected State agency or agencies must be involved by the LEA in the development of the IEP. (See response to Question 59, below, regarding participation of a private school representative at the IEP meeting.)

After the child enters the State school, meetings to review or revise the child's IEP could be conducted by either the LEA or the State school, depending upon State law, policy, or practice. However, both agencies should be involved in any decisions made about the child's IEP (either by attending the IEP meetings, or through correspondence or telephone calls). There must be a clear decision, based on State law, as to whether responsibility for the child's education is transferred to the State school or remains with the LEA, since this decision determines which agency is responsible for reviewing or revising the child's IEP.

2. *For a child placed out of State by a public agency, is the placing or receiving State responsible for the child's IEP?*

The "placing" State is responsible for developing the child's IEP and ensuring that it is implemented. The determination of the specific agency in the placing State that is responsible for the child's IEP would be based on State law, policy, or practice. However, as indicated in Question 1, above, the SEA in the placing State is responsible for ensuring that the child has available a free appropriate public education.

NOTE: The Department is considering the possibility of publishing a separate document on out-of-State placements. That paper would address the responsibilities of the placing and receiving States under both EHA-B and Section 504 of the Rehabilitation Act of 1973.

§ 300.342 When individualized education programs must be in effect.

(a) On October 1, 1977, and at the beginning of each school year thereafter, each public agency shall have in effect an individualized education program for every handicapped child who is receiving special education from that agency.

(b) An individualized education program must:

(1) Be in effect before special education and related services are provided to a child; and

(2) Be implemented as soon as possible following the meetings under § 300.343.

(20 U.S.C. 1412 (2)(B), (4), (6); 1414(a)(5); Pub. L. 94–142, Sec. 8(c) (1975).)

***Comment.* Under paragraph (b)(2), it is expected that a handicapped child's individualized education program (IEP) will be implemented immediately following the meetings under § 300.343. An exception to this would be (1) when the meetings occur during the summer or a vacation period, or (2) where there are circumstances which require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the child.**

3. *In requiring that an IEP be in effect before special education and related services are provided, what does "be in effect" mean?*

As used in the regulations, the term "be in effect" means that the IEP (1) has been developed properly (i.e., at a meeting(s) involving all of the participants specified in the Act (parent, teacher, agency representative, and, where appropriate, the child)); (2) is regarded by both the parents and agency as appropriate in terms of the child's needs, specified goals and objectives, and the services to be provided; and (3) will be implemented as written.

4. *How much of a delay is permissible between the time a handicapped child's IEP is finalized and when special education is provided?*

In general, no delay is permissible. It is expected that the special education and related services set out in a child's IEP will be provided by the agency beginning immediately after the IEP is finalized. The comment following § 300.342 identifies some exceptions ((1) when the meetings occur during the summer or other vacation period, or (2) when there are circumstances which require a short delay, such as working out transportation arrangements). However, unless otherwise specified in the IEP, the IEP services must be provided as soon as possible following the meeting.

NOTE: Section 300.346(d) requires that the IEP include the "projected dates for initiation of services."

5. *For a handicapped child receiving special education for the first time, when must an IEP be developed—before placement or after placement?*

An IEP must "be in effect *before* special education and related services are provided to a child." (§ 300.342(b)(1), emphasis added.) The appropriate placement for a given handicapped child cannot be determined until after decisions have been made about what the child's needs are and what will be provided. Since these decisions are made at the IEP meeting, it would not be permissible to first place the child and then develop the IEP. Therefore, the IEP must be developed before placement. The above requirement does not preclude temporarily placing an eligible handicapped child in a program as part of the evaluation process—before the IEP is finalized—to aid in determining the most appropriate placement for the child. It is essential that the temporary placement not become the final placement before the IEP is finalized. In order to ensure that this does not happen, the State might consider requiring LEAs to take the following actions:

a. Develop an "interim" IEP for the child, which sets out the specific conditions and timeliness for the trial placement. (See paragraph "c", below.)

b. Ensure that the parents agree to the interim placement before it is carried out, and that they are involved throughout the process of developing, reviewing, and revising the child's IEP.

c. Set a specific timeline (e.g., 30 days) for completing the evaluation and making judgments about the most appropriate placement for the child.

d. Conduct an IEP meeting at the end of the trial period in order to finalize the child's IEP.

NOTE: Once a handicapped child's IEP is in effect and the child is placed in a special education program, the teacher might develop detailed lesson plans or objectives *based* on the IEP. However, these lesson plans and objectives are not required to be a part of the IEP itself. (See Questions 37-43, below, regarding IEP goals and objectives.)

6. *If a handicapped child has been receiving special education in one LEA and moves to another community, must the new LEA hold an IEP meeting before the child is placed in a special education program?*

It would not be necessary for the new LEA to conduct an IEP meeting if:

(1) A copy of the child's current IEP is available; (2) the parents indicate that they are satisfied with the current IEP; and (3) the new LEA determines that the current IEP is appropriate and can be implemented as written.

If the child's current IEP is not available, or if either the LEA or the parent believes that it is not appropriate, an IEP meeting would have to be conducted. This meeting should take place within a short time after the child enrolls in the new LEA (normally, within one week).

NOTE: The child must be placed in a special education program immediately after the IEP is finalized. See Question 4, above.

If the LEA or the parents believe that additional information is needed (e.g., the school records from the former LEA) or that a new evaluation is necessary before a final placement decision can be made, it would be permissible to temporarily place the child in an interim program before the IEP is finalized. (See Question 5, above.)

§ 300.343 Meetings.

(a) *General.* Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising a handicapped child's individualized education program.

(b) *Handicapped children currently served.* If the public agency has determined that a handicapped child will receive special education during school year 1977–1978, a meeting must be held early enough to insure that an individualized education program is developed by October 1, 1977.

(c) *Other handicapped children.* For a handicapped child who is not included under paragraph (b) of this action, a meeting must be held within thirty calendar days of a determination that the child needs special education and related services.

(d) *Review.* Each public agency shall initiate and conduct meetings to periodically review each child's individualized education program and if appropriate revise its provisions. A meeting must be held for this purpose at least once a year.

(20 U.S.C. 1412 (2)(B), (4), (6); 1414(a)(5).)

Comment. The dates on which agencies must have individualized education programs (IEPs) in effect are specified in §300.342 (October 1, 1977, and the beginning of each school year thereafter). However, except for new handicapped children (i.e., those evaluated and determined to need special education after October 1, 1977), the timing of meetings to develop, review, and revise IEPs is left to the discretion of each agency.

In order to have IEPs in effect by the dates in §300.342, agencies could hold meetings at the end of the school year or during the summer preceding those dates. In meeting the October 1, 1977 timeline, meetings could be conducted up through the October 1 date. Thereafter, meetings may be held any time throughout the year, as long as IEPs are in effect at the beginning of each school year.

The statute requires agencies to hold a meeting at least once each year in order to review, and if appropriate revise, each child's IEP. The timing of those meetings could be on the anniversary date of the last IEP meeting on the child, but this is left to the discretion of the agency.

7. *What is the purpose of the 30 day timeline in § 300.343(c)?*

The 30 day timeline in § 300.343(c) ensures that there will not be a significant delay between the time a child is evaluated and when the child begins to receive special education. Once it is determined—through the evaluation—that a child is handicapped, the public agency has *up to* 30 days to hold an IEP meeting.

NOTE: See Questions 4 and 5, above, regarding finalization of IEP and placement of the child.

8. *Must the agency hold a separate meeting to determine a child's eligibility for special education and related services, or can this step be combined with the IEP meeting?*

Paragraph (e) of § 300.532 (*Evaluation procedures*) provides that the evaluation of each handicapped child must be "made by a multidisciplinary team or group of persons * * *". The decisions regarding (1) whether the team members actually meet together, and (2) whether such meetings are separate from the IEP meeting, are matters that are left to the discretion of State or local agencies.

In practice, some agencies hold separate eligibility meetings with the multidisciplinary team before the IEP meeting.

NOTE: When separate meetings are conducted, placement decisions would be made at the IEP meeting. However, placement options could be discussed at the eligibility meeting.

Other agencies combine the two steps into one. If a combined meeting is conducted, the public agency must include the parents as participants at the meeting. (See § 300.345 for requirements on parent participation.)

NOTE: If, at a separate eligibility meeting, a decision is made that a child is *not* eligible for special education, the parents should be notified about the decision.

9. *Must IEPs be reviewed or revised at the beginning of each school year?*

No. The basic requirement in the regulations is that IEPs must *be in effect* at the beginning of each school year. Meetings must be conducted at least once each year to review and, if necessary, revise each handicapped child's IEP. However, the meetings may be held anytime during the year, including (1) at the end of the school year, (2) during the summer, before the new school year begins, or (3) on the anniversary date of the last IEP meeting on the child.

10. *How frequently must IEP meetings be held and how long should they be?*

Section 614(a)(5) of the Act provides that each public agency must hold meetings periodically, but not less than annually, to review each child's IEP and, if appropriate, revise its provisions. The legislative history of the Act makes it clear that there should be as many meetings a year as any one child may need. (121 Cong. Rec. S20428-29 (Nov. 19, 1975) (remarks of Senator Stafford))

There is no prescribed length for IEP meetings. In general, meetings (1) will be longer for initial placements and for children who require a variety of complex services, and (2) will be shorter for continuing placements and for children who require only a minimum amount of services. In any event, however, it is expected that agencies will allow sufficient time at the meetings to ensure meaningful parent participation.

11. *Who can initiate IEP meetings?*

IEP meetings are initiated and conducted at the descretion of the public agency. However, if the parents of a handicapped child believe that the child is not progressing satisfactorily or that there is a problem with the child's current IEP, it would be appropriate for the parents to request an IEP meeting. The public agency should grant any reasonable request for such a meeting.

NOTE: Under § 300.506(a), the parents or agency may initiate a due process hearing at any time regarding any matter related to the child's IEP.

If a child's teacher(s) feels that the child's placement or IEP services are not appropriate to the child, the teacher(s) should follow agency procedures with respect to (1) calling or meeting with the parents and/or (2) requesting the agency to hold another meeting to review the child's IEP.

12. *May IEP meetings be tape-recorded?*

The use of tape recorders at IEP meetings is not addressed by either the Act or the regulations. Although taping is clearly not required, it is permissible at the option of either the parents or the agency. However, if the recording is maintained by the agency, it is an "education record", within the meaning of the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g), and would, therefore, be subject to the confidentiality requirements of the regulations under both FERPA (34 CFR Part 99) and EHA-B (34 CFR 300.560-300.565).

§ 300.344 Participants in meetings.

(a) *General.* The public agency shall insure that each meeting includes the following participants:

(1) A representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education.

(2) The child's teacher.

(3) One or both of the child's parents, subject to § 300.345.

(4) The child, where appropriate.

(5) Other individuals at the discretion of the parent or agency.

(b) *Evaluation personnel.* For a handicapped child who has been evaluated for the first time, the public agency shall insure:

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the public agency, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5).)

Comment. 1. In deciding which teacher will participate in meetings on a child's individualized education program, the agency may wish to consider the following possibilities:

(a) For a handicapped child who is receiving special education, the "teacher" could be the child's special education teacher. If the child's handicap is a speech impairment, the "teacher" could be the speech-language pathologist.

(b) For a handicapped child who is being considered for placement in special education, the "teacher" could be the child's regular teacher, or a teacher qualified to provide education in the type of program in which the child may be placed, or both.

(c) If the child is not in school or has more than one teacher, the agency may designate which teacher will participate in the meeting.

2. Either the teacher or the agency representative should be qualified in the area of the child's suspected disability.

3. For a child whose primary handicap is a speech impairment, the evaluation personnel participating under paragraph (b)(1) of this section would normally be the speech-language pathologist.

13. *Who can serve as the "representative of the public agency" at an IEP meeting?*

The "representative of the public agency" could be any member of the school staff, other than the child's teacher, who is "qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of handicapped children." (Section 602(19) of the Act.) Thus, the agency representative could be (1) a qualified special education administrator, supervisor, or teacher (including a speech-language pathologist), or (2) a school principal or other administrator—if the person is qualified to provide, or supervise the provision of, special education.

Each State or local agency may determine which specific staff member will serve as the agency representative. However, the representative should be able to ensure that whatever services are set out in the IEP will actually be provided and that the IEP will not be vetoed at a higher administrative level within the agency. Thus, the person selected should have the authority to commit agency resources (i.e., to make decisions about the specific special education and related services that the agency will provide to a particular child).

For a handicapped child who requires only a limited amount of special education, the agency representative able to commit appropriate resources could be a special education teacher, or a speech-language pathologist, other than the child's teacher. For a child who requires extensive special education and related services, the agency representative might need to be a key administrator in the agency.

NOTE: IEP meetings for continuing placements could be more routine than those for initial placements, and, thus, might not require the participation of a key administrator.

14. *Who is the "representative of the public agency" if a handicapped child is served by a public agency other than the SEA or LEA?*

The answer depends on which agency is responsible, under State law, policy, or practice, for any one or all of the following:

(1) The child's education, (2) placing the child, and (3) providing (or paying for the provision of) special education and related services to the child.

In general, the agency representative at the IEP meeting would be a member of the agency or institution that is responsible for the child's education. For example, if a State agency (1) places a child in an institution, (2) is responsible under State law for the child's education, and (3) has a qualified special education staff at the institution, then a member of the institution's staff would be the agency representative at the IEP meetings.

Sometimes there is no special education staff at the institution, and the children are served by special education personnel from the LEA where the institution is located. In this situation, a member of the LEA staff would usually serve as the agency representative.

NOTE: In situations where the LEA places a child in an institution, paragraph "b" of the response to Question 1, above, would apply.

15. *For a handicapped child being considered for initial placement in special education, which teacher should attend the IEP meeting?*

The teacher could be either (1) a teacher qualified to provide special education in the child's area of suspected disability, or (2) the child's regular teacher. At the option of the agency, both teachers could attend. In any event, there should be at least one member of the school staff at the meeting (e.g., the agency representative or the teacher) who is qualified in the child's area of suspected disability.

NOTE: Sometimes more than one meeting is necessary in order to finalize a child's IEP. If, in this process, the special education teacher who will be working with the child is identified, it would be useful to have that teacher participate in the meeting with the parents and other members of the IEP team in finalizing the IEP. When this is not possible, the agency should ensure that the teacher is given a copy of the child's IEP as soon as possible after the IEP is finalized and before the teacher begins working with the child.

16. *If a handicapped child is enrolled in both regular and special education classes, which teacher should attend the IEP meeting?*

In general, the teacher at the IEP meeting should be the child's special education teacher. At the option of the agency or the parent, the child's regular teacher also might attend. If the regular teacher does not attend, the agency should either provide the regular teacher with a copy of the IEP or inform the regular teacher of its contents. Moreover, the agency should ensure that the special education teacher, or other appropriate support person, is able, where necessary, to consult with and be a resource to the child's regular teacher.

17. *If a handicapped child in high school attends several regular classes, must all of the child's regular teachers attend the IEP meeting?*

No. Only one teacher must attend. However, at the option of the LEA, additional teachers of the child may attend. The following points should be considered in making this decision:

a. Generally, the number of participants at IEP meetings should be small. Small meetings have several advantages over large ones. For example, they (1) allow for more open, active parent involvement, (2) are less costly, (3) are easier to arrange and conduct, and (4) are usually more productive.

NOTE: In an informal examination of IEPs from five States, Department staff found that, on the average, IEP meetings were attended by four persons.

b. While large meetings are generally inappropriate, there may be specific circumstances in which the participation of additional staff would be beneficial. When the participation of the regular teachers is considered by the agency or the parents to be beneficial to the child's success in school (e.g., in terms of the child's participation in the regular education program), it would be appropriate for them to attend the meeting.

c. Although the child's regular teachers would not routinely attend IEP meetings, they should either (1) be informed about the child's IEP by the special education teacher or agency representative, and/or (2) receive a copy of the IEP itself.

18. *If a child's primary handicap is a speech impairment, must the child's regular teacher attend the IEP meeting?*

No. A speech-language pathologist would usually serve as the child's "teacher" for purposes of the IEP meeting. The regular teacher could also attend at the option of the school.

19. *If a child is enrolled in a special education class because of a primary handicap, and also receives speech-language pathology services, must both specialists attend the IEP meeting?*

No. It is not required that both attend. The special education teacher would attend the meeting as the child's "teacher". The speech-language pathologist could either (1) participate in the meeting itself, or (2) provide a written recommendation concerning the nature, frequency, and amount of services to be provided to the child.

20. *When may representatives of teacher organizations attend IEP meetings?*

Under the Family Educational Rights and Privacy Act ("FERPA"; 20 U.S.C. 1232g) and implementing regulations (34 CFR Part 99), officials of teacher organizations may not attend IEP meetings at which personally identifiable information from the student's education records may be discussed—except with the prior written consent of the parents. (See 34 CFR 99.30(a)(1).)

In addition, EHA-B does not provide for the participation of representatives of teacher organizations at IEP meetings. The legislative history of the Act makes it clear that attendance at IEP meetings should be limited to those who have an intense interest in the child. (121 Cong. Rec. S10974 (June 18, 1975) (remarks of Sen. Randolph).) Since a representative of a teacher organization would be concerned with the interests of the teacher rather than the interests of the child, it would be inappropriate for such an official to attend an IEP meeting.

21. *When may a handicapped child attend an IEP meeting?*

Generally, a handicapped child should attend the IEP meeting whenever the parent decides that it is appropriate for the child to do so. Whenever possible, the agency and parents should discuss the appropriateness of the child's participation before a decision is made, in order to help the parents determine whether or not the child's attendance will be (1) helpful in developing the IEP and/or (2) directly beneficial to the child. The agency should inform the parents before each IEP meeting—as part of the "notice of meeting" required under § 300.345(b)—that they may invite their child to participate.

NOTE: The parents and agency should encourage older handicapped children (particularly those at the secondary school level) to participate in their IEP meetings.

22. *Do the parents of a handicapped student retain the right to attend the IEP meeting when the student reaches the age of majority?*

The Act is silent concerning any modification of the rights of a handicapped student's parents when the student reaches the age of majority. The Department is considering providing further guidance on this issue in a separate document.

23. *Must related services personnel attend IEP meetings?*

No. It is not required that they attend. However, if a handicapped child has an identified need for related services, it would be appropriate for the related services personnel to attend the meeting or otherwise be involved in developing the IEP. For example, when the child's evaluation indicates the need for a specific related service (e.g., physical therapy, occupational therapy, or counseling), the agency should ensure that a qualified provider of that service either (1) attends the IEP meeting, or (2) provides a written recommendation concerning the nature, frequency, and amount of service to be provided to the child.

NOTE: This written recommendation could be a part of the evaluation report.

24. *Are agencies required to use a case manager in the development of a handicapped child's IEP?*

No. However, some agencies have found it helpful to have a special educator or some other school staff member (e.g., a social worker, counselor, or psychologist) serve as coordinator or case manager of the IEP process for an individual child or for all handicapped children served by the agency. Examples of the kinds of activities which case managers might carry out are (1) coordinating the multidisciplinary evaluation; (2) collecting and synthesizing the evaluation reports and other relevant information about a child that might be needed at the IEP meeting; (3) communicating with the parents; and (4) participating in, or conducting, the IEP meeting itself.

25. *For a child with a suspected speech impairment, who must represent the evaluation team at the IEP meeting?*

No specific person must represent the evaluation team. However, a speech-language pathologist would normally be the most appropriate representative. For many children whose primary handicap is a speech impairment, there may be no other evaluation personnel involved. The comment following § 300.532 (*Evaluation procedures*) states:

> Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision.

§ 300.345 Parent participation.

(a) Each public agency shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) The notice under paragraph (a)(1) of this section must indicate the purpose, time, and location of the meeting, and who will be in attendance.

(c) If neither parent can attend, the public agency shall use other methods to insure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls.

(2) Copies of correspondence sent to the parents and any responses received, and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the individualized education program.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6); 1414(a)(5).)

Comment. The notice in paragraph (a) could also inform parents that they may bring other people to the meeting. As indicated in paragraph (c), the procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency must keep a record of its efforts to contact parents.

26. *What is the role of the parents at an IEP meeting?*

The parents of a handicapped child are expected to be equal participants along with school personnel, in developing, reviewing, and revising the child's IEP. This is an active role in which the parents (1) participate in the discussion about the child's need for special education and related services, and (2) join with the other participants in deciding what services the agency will provide to the child.

NOTE: In some instances, parents might elect to bring another participant to the meeting, e.g., a friend or neighbor, someone outside of the agency who is familiar with applicable laws and with the child's needs, or a specialist who conducted an independent evaluation of the child.)

27. *What is the role of a surrogate parent at an IEP meeting?*

A surrogate parent is a person appointed to represent the interests of a handicapped child in the educational decision-making process when that child has no other parent representation. The surrogate has all of the rights and responsibilities of a parent under EHA-B. Thus, the surrogate parent is entitled to (1) participate in the child's IEP meeting, (2) see the child's education records, and (3) receive notice, grant consent, and invoke due process to resolve differences. (See § 300.514, *Surrogate parents.*)

28. *Must the public agency let the parents know who will be at the IEP meeting?*

Yes. In notifying parents about the meeting, the agency "must indicate the purpose, time, and location of the meeting, and *who will be in attendance.*" (§ 300.345(b), emphasis added.) Where possible, the agency should give the name and position of each person who will attend. In addition, the agency should inform the parents of their right to bring other participants to the meeting. (See Question 21, above, regarding participation of the child.) It is also appropriate for the agency to ask whether the parents intend to bring a participant to the meeting.

29. *Are parents required to sign IEPs?*

Parent signatures are not required by either the Act or regulations. However, having such signatures is considered by parents, advocates, and public agency personnel to be useful.

NOTE: A national survey conducted under contract with the Department indicates that, in practice, most IEPs are signed by parents.)

The following are some of the ways in which IEPs signed by parents and/or agency personnel might be used:

a. A signed IEP is one way to document who attended the meeting.

NOTE: This is useful for monitoring and compliance purposes.

If signatures are not used, the agency must document attendance in some other way.

b. An IEP signed by the parents is one way to indicate that the parents approved the child's special education program.

NOTE: If, after signing, the parents feel that a change is needed in the IEP, it would be appropriate for them to request another meeting. See Question 11, above.

c. An IEP signed by an agency representative provides the parents a signed record of the services that the agency has agreed to provide.

NOTE: Even if the school personnel do not sign, the agency still must provide, or ensure the provision of, the services called for in the IEP.

30. *If the parent signs the IEP, does the signature indicate consent for initial placement?*

The parent's signature on the IEP would satisfy the consent requirement concerning initial placement of the child (§ 300.504(b)(1)(ii)) only if the IEP includes a statement on initial placement which meets the definition of "consent" in § 300.500:

> "Consent" means that: (a) the parent has been fully informed of all information relevant to the activity for which consent is sought * * *
>
> (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and
>
> (c) The parent understands that the granting of consent is voluntary * * * and may be revoked at any time.

31. *Do parents have the right to a copy of their child's IEP?*

Yes. Section 300.345(f) states that "the public agency shall give the parent, on request, a copy of the individualized education program." In order that parents may know about this provision, it is recommended that they be informed about it at the IEP meeting and/or receive a copy of the IEP itself a reasonable time following the meeting.

NOTE: The National Committee for Citizens in Education reports that in a 1979 survey of approximately 2,500 parents of handicapped children in 46 States, nearly 60% indicated that a completed copy of the IEP had been made available for them to keep.

32. *Must parents be informed at the IEP meeting of their right to appeal?*

If the agency has already informed the parents of their right to appeal, as it is required to do under the prior notice provisions of the regulations (§§ 300.504–300.505), it would not be necessary for the agency to do so again at the IEP meeting.

- Section 300.504(a) of the regulations states that "written notice which meets the requirements under § 300.505 must be given to parents a reasonable time" before the public agency proposes or refuses "to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child."
- Section 300.505(a) states that the notice must include "(1) A full explanation of all procedural safeguards available to parents" under the due process provisions of the regulations (§§ 300.500–300.589).

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to jointly decide upon what the child's needs are, what will be provided, and what the anticipated outcomes may be. If, during the IEP meeting, parents and school staff are unable to reach agreement, the agency should remind the parents that they may seek to resolve their differences though the due process procedures under the Act.

NOTE: Section 300.506(a) states that "a parent or public educational agency may initiate a hearing on any matters described in § 300.504(a)(1) and (2)."

Every effort should be made to resolve differences between parents and school staff without resort to a due process hearing (i.e., through voluntary mediation or some other informal step). However, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing. (See § 300.506. *Impartial due process hearing.*)

33. *Does the IEP include ways for parents to check the progress of their children?*

In general, the answer is yes. The IEP document is a written record of decisions jointly made by parents and school personnel at the IEP meeting regarding a handicapped child's special education program. That record includes agreed upon items, such as goals and objectives, and the specific special education and related services to be provided to the child.

The goals and objectives in the IEP should be helpful to both parents and school personnel, in a general way, in checking on a child's progress in the special education program. (See Questions 37-43, below, regarding goals and objectives in the IEP.) However, since the IEP is not intended to include the specifics about a child's total educational program that are found in daily, weekly, or monthly instructional plans, parents will often need to obtain more specific, on-going information about the child's progress—through parent-teacher conferences, report cards and other reporting procedures ordinarily used by the agency.

34. *Must IEPs include specific "checkpoint intervals" for parents to confer with teachers and to revise or update their children's IEPs?*

No. A handicapped child's IEP is not required to include specific "checkpoint intervals" (i.e., meeting dates) for reviewing the child's progress. However, in individual situations, specific meeting dates could be designated in the IEP, if the parents and school presonnel believe that it would be helpful to do so.

Although meeting dates are not required to be set out in the IEP itself, there are specific provisions in the regulations and in this document regarding agency responsibilities in initiating IEP meetings, including the following:

(1) Public agencies must hold meetings periodically, but not less than annually, to review, and if appropriate, revise, each child's IEP (§ 300.343(d)); (2) there should be as many meetings a year as the child needs (see Question 10, above); and (3) agencies should grant any reasonable parental request for an IEP meeting (see Question 11, above).

In addition to the above provisions, it is expected that, through an agency's general reporting procedures for all children in school, there will be specific designated times for parents to review their children's progress (e.g., through periodic parent-teacher conferences, and/or the use of report cards, letters, or other reporting devices).

35. *If the parents and agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?*

As a general rule, the agency and parents would agree to an interim course of action for serving the child (i.e., in terms of placement and/or services) to be followed until the area of disagreement over the IEP is resolved. The manner in which this interim measure is developed and agreed to by both parties is left to the discretion of the individual State or local agency. However, if the parents and agency cannot agree on an interim measure, the child's last agreed upon IEP would remain in effect in the areas of disagreement until the disagreement is resolved. The following may be helpful to agencies when there are disagreements:

a. There may be instances where the parents and agency are in agreement about the basic IEP services (e.g., the child's placement and/or the special education services), but disagree about the provision of a particular related service (i.e., whether the service is needed and/or the amount to be provided). In such cases, it is recommended (1) that the IEP be implemented in all areas in which there is agreement, (2) that the document indicate the points of disagreement, and (3) that procedures be initiated to resolve the disagreement.

b. Sometimes the disagreement is with the placement or kind of special education to be provided (e.g., one party proposes a self-contained placement, and the other proposes resource room services). In such cases, the agency might, for example, carry out any one or all of the following steps:

(1) Remind the parents that they may resolve their differences through the due process procedures under EHA-B; (2) work with the parents to develop an interim course of action (in terms of placement and/or services) which both parties can agree to until resolution is reached; and (3) recommend the use of mediation, or some other informal procedure for resolving the differences without going to a due process hearing. (See Question 32, above, regarding the right to appeal.)

c. If, because of the disagreement over the IEP, a hearing is initiated by either the parents or agency, the agency may not change the child's placement unless the parents and agency agree otherwise. (See § 300.513, *Child's status during proceedings.*) The following two examples are related to this requirement:

(1) A child in the regular fourth grade has been evaluated and found to be eligible for special education. The agency and parents agree that the child has a specific learning disability. However, one party proposes placement in a self-contained program, and the other proposes placement in a resource room. Agreement cannot be reached, and a due process hearing is initiated. Unless the parents and agency agree otherwise, the child would remain in the regular fourth grade until the issue is resolved.

On the other hand, since the child's need for special education is not in question, both parties might agree—as an interim measure—(1) to temporarily place the child in either one of the programs proposed at the meeting (self-contained program or resource room), or (2) to serve the child through some other temporary arrangement.

(2) A handicapped child is currently receiving special education under an existing IEP. A due process hearing has been initiated regarding an alternative special education placement for the child. Unless the parents and agency agree otherwise, the child

would remain in the current placement. In this situation, the child's IEP could be revised, as necessary, and implemented in all of the areas agreed to by the parents and agency, while the area of disagreement (i.e., the child's placement) is being settled through due process.

NOTE: If the due process hearing concerns whether or not a particular service should continue to be provided under the IEP (e.g., physical therapy), that service *would* continue to be provided to the child under the IEP that was in effect at the time the hearing was initiated, (1) unless the parents and agency agree to a change in the services, or (2) until the issue is resolved.

§ 300.346 Content of individualized education program.

The individualized education program for each child must include:

(a) A statement of the child's present levels of educational performance;

(b) A statement of annual goals, including short term instructional objectives;

(c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;

(d) The projected dates for initiation of services and the anticipated duration of the services; and

(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

(20 U.S.C. 1401(19); 1412 (2)(B), (4), (6), 1414(a)(5); Senate Report No. 94-168, p. 11 (1975).)

36. *What should be included in the statement of the child's present levels of educational performance?*

The statement of present levels of educational performance will be different for each handicapped child. Thus, determinations about the content of the statement for an individual child are matters that are left to the discretion of participants in the IEP meetings. However, the following are some points which should be taken into account in writing this part of the IEP.

a. The statement should accurately describe the effect of the child's handicap on the child's performance in any area of education that is affected, including (1) academic areas (reading, math, communication, etc.), and (2) non-academic areas (daily life activities, mobility, etc.).

NOTE: Labels such as "mentally retarded" or "deaf" may not be used as a substitute for the description of present levels of educational performance.)

b. The statement should be written in objective measurable terms, to the extent possible. Data from the child's evaluation would be a good source of such information. Test scores that are pertinent to the child's diagnosis might be included, where appropriate. However, the scores should be (1) self-explanatory (i.e., they can be interpreted by all participants without the use of test manuals or other aids), or (2) an explanation should be included. Whatever test results are used should reflect the impact of the handicap on the child's performance. Thus, raw scores would not usually be sufficient.

c. There should be a direct relationship between the present levels of educational performance and the other components of the IEP. Thus, if the statement describes a problem with the child's reading level and points to a deficiency in a specific reading skill, this problem should be addressed under both (1) goals and objectives, and (2) specific special education and related services to be provided to the child.

37. *Why are goals and objectives require in the IEP?*

The statutory requirements for including annual goals and short term objectives (Section 602(19)(B)), and for having at least an annual review of a handicapped child's IEP (Section 614(a)(5)), provide a mechanism for determining (1) whether the anticipated outcomes for the child are being met (i.e., whether the child is progressing in the special education program) and (2) whether the placement and services are appropriate to the child's special learning needs. In effect, these requirements provide a way for the child's teacher(s) and parents to be able to track the child's progress in special education. However, the goals and objectives in the IEP are not intended to be as specific as the goals and objectives that are normally found in daily, weekly, or monthly instructional plans.

38. *What are "annual goals" in an IEP?*

The annual goals in the IEP are statements which describe what a handicapped child can reasonably be expected to accomplish within a twelve month period in the child's special education program. As indicated under Question 36, above, there should be a direct relationship between the annual goals and the present levels of educational performance.

39. *What are "short term instructional objectives" in an IEP?*

"Short term instructional objectives" (also called "IEP objectives") are measurable, intermediate steps between a handicapped child's present levels of educational performance and the annual goals that are established for the child. The objectives are developed based on a logical breakdown of the major components of the annual goals, and can serve as milestones for measuring progress toward meeting the goals.

In some respects, IEP objectives are similar to objectives used in daily classroom instructional plans. For example, both kinds of objectives are used (1) to describe what a given child is expected to accomplish in a particular area within some specified time period, and (2) to determine the extent to which the child is progressing toward those accomplishments.

In other respects, objectives in IEPs are different from those used in instructional plans, primarily in the amount of detail they provide. IEP objectives provide general benchmarks for determining progress toward meeting the annual goals. These objectives should be projected to be accomplished over an extended period of time (e.g., an entire school quarter or semester). On the other hand, the objectives in classroom instructional plans deal with more specific outcomes that are to be accomplished on a daily, weekly, or monthly basis. Classroom instructional plans generally include details not required in an IEP, such as the specific methods, activities, and materials (e.g., use of flash cards) that will be used in accomplishing the objectives.

40. *Should the IEP goals and objectives focus only on special education and related services, or should they relate to the total education of the child?*

IEP goals and objectives are concerned primarily with meeting a handicapped child's need for special education and related services, and are not required to cover other areas of the child's education. Stated another way, the goals and objectives in the IEP should focus on offsetting or reducing the problems resulting from the child's handicap which interfere with learning and educational performance in school. For example, if a learning disabled child is functioning several grades below the child's indicated ability in reading and has a specific problem with word recognition, the IEP goals and objectives would be directed toward (1) closing the gap between the child's indicated ability and current level of functioning, and (2) helping the child increase the ability to use word attack skills effectively (or to find some other approach to increase independence in reading).

For a child with a mild speech impairment, the IEP objectives would focus on improving the child's communication skills, by either (1) correcting the impairment, or (2) minimizing its effect on the child's ability to communicate. On the other hand, the goals and objectives for a severely retarded child would be more comprehensive and cover more of the child's school program than if the child has only a mild handicap.

41. *Should there be a relationship between the goals and objectives in the IEP and those that are in instructional plans of special education personnel?*

Yes. There should be a direct relationship between the IEP goals and objectives for a given handicapped child and the goals and objectives that are in the special education instructional plans for the child. However, the IEP is not intended to be detailed enough to be used as an instructional plan. The IEP, through its goals and objectives, (1) sets the general direction to be taken by those who will implement the IEP, and (2) serves as the basis for developing a detailed instructional plan for the child.

NOTE: See Question 56, below, regarding the length of IEPs.

42. *When must IEP objectives be written—before placement or after placement?*

IEP objectives must be written before placement. Once a handicapped child is placed in a special education program, the teacher might develop lesson plans or more detailed objectives *based* on the IEP; however, such plans and objectives are not required to be a part of the IEP itself.

43. *Can short term instructional objectives be changed without initiating another IEP meeting?*

No. Section 300.343(a) provides that the agency "is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and *revising* a handicapped child's individualized education program" (emphasis added). Since a change in short term instructional objectives constitutes a revision of the child's IEP, the agency must (1) notify the parents of the proposed change (see § 300.504(a)(1)), and (2) initiate an IEP meeting. Note, however, that if the parents are unable or unwilling to attend such a meeting, their participation in the revision of the IEP objectives can be obtained through other means, including individual or conference telephone calls (see § 300.345(c)).

44. *Must the IEP include all special education and related services needed by the child*

or only those available from the public agency?

Each public agency must provide a free appropriate public education to all handicapped children under its jurisdiction. Therefore, the IEP for a handicapped child must include all of the specific special education and related services needed by the child—as determined by the child's current evaluation. This means that the services must be listed in the IEP even if they are not directly available from the local agency, and must be provided by the agency through contract or other arrangements.

45. *Is the IEP a commitment to provide services—i.e., must a public agency provide all of the services listed in the IEP?*

Yes. Each handicapped child's IEP must include all services necessary to meet the child's identified special education and related services needs; and all services in the IEP must be provided in order for the agency to be in compliance with the Act.

46. *Must the public agency itself directly provide the services set out in the IEP?*

The public agency responsible for the education of a handicapped child could provide IEP services to the child (1) directly, through the agency's own staff resources, or (2) indirectly, by contracting with another public or private agency, or through other arrangements. In providing the services, the agency may use whatever State, local, Federal, and private sources of support are available for those purposes (see § 300.301(a)). However, the services must be at no cost to the parents, and resposibility for ensuring that the IEP services are provided remains with the public agency.

47. *Does the IEP include only special education and related services or does it describe the total education of the child?*

The IEP is required to include only those matters concerning the provision of special education and related services and the extent to which the child can participate in regular education programs. (NOTE: The regulations define "special education" as specially designed instruction to meet the unique needs of a handicapped child, and "related services" as those which are necessary to assist the child to benefit from special education.) (See §§ 300.14 and 300.13, respectively.)

For some handicapped children, the IEP will only address a very limited part of their education (e.g., for a speech impaired child, the IEP would generally be limited to the child's speech impairment). For other children (e.g., those who are profoundly retarded), the IEP might cover their total education. An IEP for a physically impaired child with no mental impairment might consist only of specially designed physical education. However, if the child also has a mental impairment, the IEP might cover most of the child's education

NOTE: The IEP is not intended to be detailed enough to be used as an instructional plan. See Question 41, above.

48. *If modifications are necessary for a handicapped child to participate in a regular education program, must they be included in the IEP?*

Yes. If modifications (supplementary aids and services) to the regular education program are necessary to ensure the child's participation in that program, those modifications must be described in the child's IEP (e.g., for a hearing impaired child, special seating arrangements or the provision of assignments in writing). This applies to any regular education program in which the student may participate, including physical education, art, music, and vocational education.

49. *When must physical education (PE) be described or referred to in the IEP?*

Section 300.307(a) provides that "physical education services, specially designed if necessary, must be made available to every handicapped child receiving a free appropriate public education." The following paragraphs (1) set out some of the different PE program arrangements for handicapped students, and (2) indicate whether, and to what extent, PE must be described or referred to in an IEP:

a. *Regular PE with non-handicapped students.* If a handicapped student can participate fully in the regular PE program without any special modifications to compensate for the student's handicap, it would not be necessary to describe or refer to PE in the IEP. On the other hand, if some modifications to the regular PE program are necessary for the student to be able to participate in that program, those modifications must be described in the IEP.

b. *Specially designed PE.* If a handicapped student needs a specially designed PE program, that program must be addressed in all applicable areas of the IEP (e.g., present levels of educational performance, goals and objectives, and services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the student's IEP.

c. *PE in separate facilities.* If a handicapped student is educated in a separate facility, the PE program for that student must be described or referred to in the IEP. However, the kind and amount of information to be included in the IEP would depend on the physical-motor needs of the student and the type of PE program that is to be provided.

Thus, if a student is in a separate facility that has a standard PE program (e.g., a residential school for the deaf), and if it is determined—on the basis of the student's most recent evaluation—that the student is able to participate in that program without any modifications, then the IEP need only note such participation. On the other hand, if special modifications to the PE program are needed for the student to participate, those modifications must be described in the IEP. Moreover, if the student needs an individually designed PE program, that program must be addressed under all applicable parts of the IEP. (See paragraph "b", above.)

NOTE: The Department is considering the possibility of publishing a separate document on the PE requirement under the Act and regulations.

50. *If a handicapped student is to receive vocational education, must it be described or referred to in the student's IEP?*

The answer depends on the kind of vocational education program to be provided. If a handicapped student is able to participate in the regular vocational education program without any modifications to compensate for the student's handicap, it would not be necessary to include vocational education in the student's IEP. On the other hand, if modifications to the regular vocational education program are necessary in order for the student to participate in that program, those modifications must be included in the IEP. Moreover, if the student needs a specially designed vocational education program, then vocational education must be described in all applicable areas of the student's IEP (e.g., present levels of educational performance, goals and objectives, and specific services to be provided). However, these statements would not have to be presented in any more detail than the other special education services included in the IEP.

NOTE: Regulations under the Vocational Education Act provide that (1) certain funds available under that Act for vocational programs for handicapped persons must be used in a manner consistent with the State's plan under EHA-B, and (2) the five-year State Vocational Education Plan "shall describe how the program provided each handicapped child will be planned and coordinated in conformity with and as a part of the child's individualized education program as required by the Education of the Handicapped Act." See 34 CFR 400.141(f)(10), 400.182(f) (formerly 45 CFR 104.141(f)(10), 104.182(f)).

51. *Must the IEP specify the amount of services or may it simply list the services to be provided?*

The amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to that specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

Changes in the amount of services listed in the IEP cannot be made without holding another IEP meeting. However, as long as there is no change in the overall amount, some adjustments in scheduling the services should be possible (based on the professional judgment of the service provider) without holding another IEP meeting.

NOTE: The parents should be notified whenever this occurs.

52. *Must a handicapped child's IEP indicate the extent to which the child will be educated in the regular educational program?*

Yes. Section 300.346(c) provides that the IEP for each handicapped child must include a "statement of * * * the extent to which the child will be able to particpate in regular educational programs." One way of meeting this requirement is to indicate the percent of time the child will be spending in the regular education program with non-handicapped students. Another way is to list the specific regular education classes the child will be attending.

NOTE: If a severely handicapped child, for example, is expected to be in a special classroom setting most of the time, it is recommended that, in meeting the above requirement, the IEP include any non-curricular activities in which the child will be participating with non-handicapped students (e.g., lunch, assembly periods, club activities, and other special events).

53. *Can the anticipated duration of services be for more than twelve months?*

In general, the anticipated duration of services would be up to twelve months. There is a direct relationship between the anticipated duration of services and the other parts of the IEP (e.g., annual goals and short term objectives), and each part of the IEP would be addressed whenever there is a review of the child's program. If it is anticipated that the child will need a particular service for more than one year, the duration of that service could be projected beyond that time in the IEP. However, the duration of each service must be reconsidered whenever the IEP is reviewed.

54. *Must the evaluation procedures and schedules be included as a separate item in the IEP?*

No. The evaluation procedures and schedules need not be included as a separate item in the IEP, but they must be presented in a recognizable form and be clearly linked to the short term objectives.

NOTE: In many instances, these components are incorporated directly into the objectives.

OTHER QUESTIONS ABOUT THE CONTENT OF AN IEP

55. *Is it permissible for an agency to have the IEP completed when the IEP meeting begins?*

No. It is not permissible for an agency to present a completed IEP to parents for their approval before there has been a full discussion with the parents of (1) the child's need for special education and related services, and (2) what services the agency will provide to the child. Section 602(9) of the Act defines the IEP as a written statement *developed in any meeting* with the agency representative, the teacher, the parent, and, whenever appropriate, the child.

It would be appropriate for agency staff to come prepared with evaluation findings, statements of present levels of educational performance, and a recommmendation regarding annual goals, short term instructional objectives, and the kind of special education and related services to be provided. However, the agency must make it clear to the parents at the outset of the meeting that the services proposed by the agency are only recommendations for review and discussion with the parents. The legislative history of Pub. L. 94-142 makes it clear that parents must be given the opportunity to be active participants in all major decisions affecting the education of their handicapped children. (See, e.g., S. Rep. No. 168, 94th Cong. 1st Sess. 13 (1975); S. Rep. No. 455 (Conference Report), 94th Cong. 1st Sess. 47-50 (1975).)

56. *Is there a prescribed format or length for an IEP?*

No. The format and length of an IEP are matters left to the discretion of State and local agencies. The IEP should be as long as necessary to adequately describe a child's program. However, as indicated in Question 41, above, the IEP is not intended to be a detailed instructional plan. The Federal IEP requirements can usually be met in a one to three page form.

NOTE: In a national survey conducted under contract with the Department, it was found that 47% of the IEPs reviewed were 3 pages or less in length.

57. *Is it permissible to consolidate the IEP with an individualized service plan developed under another Federal program?*

Yes. In instances where a handicapped child must have both an IEP and an individualized service plan under another Federal program, it may be possible to develop a single, consolidated document: *Provided*, That (1) it contains all of the information required in an IEP, and (2) all of the necessary parties participate in its development.

Examples of individualized service plans which might be consolidated with the IEP are: (1) The Individualized Care Plan (Title XIX of the Social Security Act (Medicaid)), (2) the Individualized Program Plan (Title XX of the Social Security Act (Social Services)), (3) the Individualized Service Plan (Title XVI of the Social Security Act (Supplemental Security Income)), and (4) the Individualized Written Rehabilitation Plan (Rehabilitation Act of 1973).

58. *What provisions on confidentiality of information apply to IEPs?*

IEPs are subject to the confidentiality provisions of both (1) EHA-B (Section 617(c) of the Act; §§ 300.560-300.576 of the regulations), and (2) the Family Educational Rights and Privacy Act ("FERPA", 20 U.S.C. 1232g). An IEP is an "education record" as that term is used in the FERPA and implementing regulations (34 CFR Part 99) and is, therefore, subject to the same protections as other education records relating to the student.

NOTE: Under Section 99.31(a) of the FERPA regulations, an educational agency may disclose personally identifiable information from the education records of a student without the written consent of the parents "if the disclosure is—(1) To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests * * *" in that information.

§ 300.347 Private school placements.

(a) *Developing individualized education programs.* (1) Before a public agency places a handicapped child in, or refers a child to, a private school or facility, the agency shall initiate and conduct a meeting to develop an individualized education program for the child in accordance with § 300.343.

(2) The agency shall insure that a representative of the private school facility attends the meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school or facility, including individual or conference telephone calls.

(3) The public agency shall also develop an individualized educational program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations.

(b) *Reviewing and revising individualized education programs.* (1) After a handicapped child enters a private school or facility, any meetings to review and revise the child's individualized education program may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall insure that the parents and an agency representative:

(i) Are involved in any decision about the child's individualized education program; and

(ii) Agree to any proposed changes in the program before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child's individualized education program, responsibility for compliance with this part remains with the public agency and the State educational agency.

(20 U.S.C. 1413(a)(4)(B).)

59. *If placement decisions are made at the time the IEP is developed, how can a private school representative attend the meeting?*

Generally, a child who requires placement in either a public or private residential school has already been receiving special education, and the parents and school personnel have often jointly been involved over a prolonged period of time in attempting to find the most appropriate placement for the child. At some point in this process (e.g., at a meeting where the child's current IEP is being reviewed), the possibility of residential school placement might be proposed—by either the parents or school personnel. If both agree, then the matter would be explored with the residential school. A subsequent meeting would then be conducted to finalize the IEP. At this meeting, the public agency must ensure that a representative of the residential school either (1) attends the meeting, or (2) participates through individual or conference telephone calls, or by other means.

§ 300.348 Handicapped children in parochial or other private schools.

If a handicapped child is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall:

(a) Initiate and conduct meetings to develop, review, and revise an individualized education program for the child, in accordance with § 300.343; and

(b) Insure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the agency shall use other methods to insure participation by the private school, including individual or conference telephone calls.

(20 U.S.C. 1413(a)(4)(A).)

NOTE: The Department is considering publishing a separate document concerning the education of handicapped children placed in parochial or other private schools by their parents. Questions concerning IEPs for those children would be addressed in that document.

§ 300.349 Individualized education program—accountability.

Each public agency must provide special education and related services to a handicapped child in accordance with an individualized education program. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

(20 U.S.C. 1412(2)(B); 1414(a) (5), (6); Cong. Rec. at H 7152 (daily ed., July 21, 1975).)

Comment. **This section is intended to relieve concerns that the individualized education program constitutes a guarantee by the public agency and the teacher that a child will progress at a specified rate. However, this section does not relieve agencies and teachers from making good faith efforts to assist the child in achieving the objectives and goals listed in the individualized education program. Further, the section does not limit a parent's right to complain and ask for revisions of the child's program, or to invoke due process procedures, if the parent feels that these efforts are not being made.**

60. *Is the IEP a performance contract?*

No. Section 300.349 makes it clear that the IEP is *not* a performance contract that imposes liability on a teacher or public agency if a handicapped child does not meet the IEP objectives. While the agency must provide special education and related services in accordance with each handicapped child's IEP, the Act does not require that the agency, the teacher, or other persons be held accountable if the child does not achieve the growth projected in the written statement.

[46 FR 5461, Jan. 19, 1981]

PART 301—INCENTIVE GRANTS

Sec.

301.1 Scope; purpose.
301.2 Regulations that apply to the Incentive Grants Program.
301.3 Eligibility.
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301.5 Application contents.
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301.7 Allowable expenditures.
301.8 Excess costs.

AUTHORITY: Sec. 619 of Pub. L. 91-230, as amended, 89 Stat. 793 (20 U.S.C. 1419).

SOURCE: 42 FR 42517, Aug. 23, 1977, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

§ 301.1 Scope; purpose.

(a) This part applies to assistance under section 619 of the Act.

(b) The Secretary awards a grant to each State which provides special education and related services to handicapped children ages three, four, or five.

(c) The State shall use funds provided under this part to give special education and related services to handicapped children in the age groups named in paragraph (b) of this section and to handicapped children from birth to three years of age.

(d) The terms "special education" and "related services" have the meanings defined in § 300.12 and § 300.13 of this chapter.

(Authority: 20 U.S.C. 1419(c))

[42 FR 42517, Aug. 23, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 49 FR 32356, Aug. 14, 1984]

§ 301.2 Regulations that apply to the Incentive Grants Program.

(a) *Regulations.* The following regulations apply to the Incentive Grants Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs) and Part 77 (Definitions).

(2) The regulations in this Part 301.

(3) The definitions in Part 300.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to assist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(Authority: 20 U.S.C. 1221e-3(a)(1))

[45 FR 22533, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 301.3 Eligibility.

A State is eligible to receive a grant if:

(a) The Secretary has approved its annual program plan under Part 300 of this chapter; and

(b) The State provides special education and related services to any handicapped children aged three, four, or five.

(Authority: 20 U.S.C. 1419(a))

§ 301.4 Application.

To receive funds under this part, a State must submit an application to the Secretary through its State educational agency.

(Authority: 20 U.S.C. 1419(b))

§ 301.5 Application contents.

An application must include the following material:

(a) A description of the State's goals and objectives for meeting the educational needs of handicapped children from birth through five years of age. These goals and objectives must be consistent with the State's full educational opportunity goal under § 300.123 of this chapter.

(b) A description of the objectives to be supported by the grant in sufficient detail to determine what will be achieved with the grant.

(c) A description of the activities to be supported by the grant. The activities must be related to the objectives under paragraph (b) of this section and must be described in sufficient detail to determine how the grant will be used.

(d) A description of the impact the proposed activities will have on handicapped children from birth through through five years of age. This description must include evidence that the proposed activities are of sufficient size, scope, and quality to warrant the amount of the expenditure. The application must indicate the number of children to be served and the number of handicapped children who will be benefitted indirectly. If children are to be benefitted indirectly, there must be a rationale that demonstrates the benefit.

(e) The number of local educational agencies or intermediate educational units, and the number and names of other agencies which will provide contractual services under the grant, the activities they will carry out, and the reasons for selecting these agencies.

(f) The dollar amounts that will be spent for each major activity described.

(g) A description of the procedures the State will use to evaluate the extent to which the activities met the objectives described under paragraph (b) of this section

(Information collection requirements contained in paragraphs (a) and (d) were approved by the Office of Management and Budget under control number 1820-0028)

(Authority: 20 U.S.C. 1419(b))

[42 FR 42517, Aug. 23, 1977. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 49 FR 32356, Aug. 14, 1984]

§ 301.6 Amount of grant.

(a) The amount of a grant is $300 multiplied by the average number of children ages three through five counted during the current school year under §§ 300.750-300.754 of this chapter.

(b) If appropriated funds are less than enough to pay in full the grants under this part, the amount of each grant is ratably reduced.

(Authority: 20 U.S.C. 1419 (a), (d))

§ 301.7 Allowable expenditures.

(a) The State educational agency may use funds under this part to give special education and related services to handicapped children ages three through five who are not counted under §§ 300.750-300.754 of this chapter if the State educational agency insures that those children have all of the rights afforded under Part 300 of this chapter.

(b) The State educational agency may use up to five percent of its grant for the costs of administering the funds provided under this part.

(Authority: 20 U.S.C. 1419(c))

Comment. In carrying out the provisions of this part some activities are considered particularly appropriate for the use of these funds: (1) Providing parents with child development information; (2) assisting parents in the understanding of the special needs of their handicapped child; (3) providing parent counseling and parent training, where appropriate, to enable parents to work more effectively with their children;

(4) providing essential diagnosis and assessment; (5) providing transportation essential to the delivery of services; (6) providing speech therapy, occupational therapy, or physical therapy.

§ 301.8 Excess costs.

(a) If local or State funds are available to pay for the education of nonhandicapped children of the same age as the handicapped children served with funds under this part, funds equal to that amount must also be made available for these handicapped children.

(b) If no local or State funds are available for nonhandicapped children of the same age, funds under this part may be used to pay for all of the costs directly attributable to the education of the handicapped children.

(Authority: 20 U.S.C. 1419(c))

PART 302—STATE OPERATED PROGRAMS FOR HANDICAPPED CHILDREN

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AUTHORITY: Sec. 121 of Pub. L. 89-10, as amended, 88 Stat. 491-492 (20 U.S.C. 241c-1), unless otherwise noted.

SOURCE: 43 FR 16262, Apr. 17, 1978, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 302.1 Scope.

This part applies to programs and projects assisted under section 121 of Title I of the Elementary and Secondary Education Act of 1965, as amended.

(Authority: 20 U.S.C. 241c-1)

§ 302.2 Regulations that apply to State Operated Programs for Handicapped Children.

(a) *Regulations.* The following regulations apply to State Operated Programs for Handicapped Children:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs) and Part 77 (Definitions).

(2) The regulations in this Part 302.

(3) The regulations in 34 CFR Part 200 (general requirements relating to Title I of the Act). However, § 200.92 (Use of funds for services that the applicant is required to provide) does not apply.

(b) *How to use regulations; how to apply for funds.* The "Introduction to Regulations of the Department" at the beginning of EDGAR includes general information to asw⊖ist in—

(1) Using regulations that apply to Department programs; and

(2) Applying for assistance under a Department program.

(Authority: 20 U.S.C. 1221e-3(a)(1))

[45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 302.3 Definitions.

As used in this part (in addition to the definitions set forth in Parts 77 and 200 of this chapter):

"Handicapped children" includes those children who are mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, or other health impaired, who because of those impairments need special education.

"Related services" is used in this part as defined in § 300.13 of this chapter.

"Special education" is used in this part as defined in § 300.14 of this chapter.

"State agency" means an institution or agency of the State which has direct responsibility established under State law for providing free public education for handicapped children.

"State-operated school" means a school or a program which is administered directly by a State agency.

"State-supported school" means a school or program operated under contract or other arrangement with a State agency.

(Authority: 20 U.S.C. 241c-1; 20 U.S.C. 1401 (16), (17))

Comment. A State agency may use funds under this part only to serve those handicapped children for whom the agency is directly responsible for providing free public education. The State agency may serve those handicapped children in State-operated or in State-supported schools. Although typically the State agency contributes a significant portion of the cost of providing education to handicapped children in a State-supported school, the extent of that contribution is irrelevant as long as the State agency is legally responsible for providing education to the handicapped children in that State-supported school.

Subpart B—State Educational Agency Participation

§ 302.12 State educational agency as fiscal agent.

The State educational agency may act as the fiscal agent of the State agency in disbursing funds under this part, including transfers of funds to local educational agencies under Subpart D of this part.

(Authority: 20 U.S.C. 241c-1)

§ 302.13 Other State educational agency responsibilities.

In addition to those requirements in Part 200 of this chapter, each State educational agency shall:

(a)—(b) [Reserved]

(c) Assist State agencies and local educational agencies in determining and reporting average daily attendance of handicapped children under Subpart E of this part;

(d) Insure that all handicapped children served with funds under this part are receiving special education in a program which meets the State educational agency standards under § 302.51;

(e) Insure that the information reported under § 302.44(b) is accurate.

(Authority: 20 U.S.C. 241c-1)

[43 FR 16262, Apr. 17, 1978, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 302.14 Reallocation of funds between State agencies.

The State educational agency shall reallocate funds (subject to the prior written approval of the Secretary) between State agencies if a handicapped child who generated funds in one participating State agency is transferred to another participating State agency.

(Authority: 20 U.S.C. 241c-1)

Subpart C—State Agency Participation

§ 302.20 State agency eligibility.

Each State agency is eligible to receive a grant under this part for each fiscal year.

(Authority: 20 U.S.C. 241c-1)

§ 302.21 Project application requirements.

(a) In order to receive a grant under this part, a State agency must submit a project application to the State educational agency.

(b) A project application must:

(1) Meet the requirements in Subpart D of Part 200 of this chapter;

(2) Set forth the number of handicapped children to be served with funds under this part;

(3) Describe the nature and purpose of the proposed project and include measurable child-centered objectives;

(4) Identify each school in which the handicapped children are enrolled, the number of those children, and their ages and handicapping conditions;

(5) Describe the educational services currently being provided for handicapped children with State and local funds in each of these schools;

(6) Provide an assessment and discription of the needs of those children for special education and related services based on the best available data, including data on their past educational performance;

(7) Describe each educational service to be provided with funds under this part to meet the needs assessed and described under paragraph (b)(6) of this section;

(8) Describe any proposed training for the school staff and for the parents of those children;

(9) Describe the procedures which will be used to evaluate the effectiveness of the project;

(10) Describe the nature and extent of any proposed coordination with other Federal, State, or local agencies, or related programs, in the development, operation, and administration of the program or project assisted under this part;

(11) Provide for educational services and training for parents of those children, to the extent that parental understanding of the services being provided to their children could contribute to the effectiveness of the program or project;

(12) Describe the procedures to be used in developing and implementing the individualized education program which must be provided for each handicapped child under Part 300 of this chapter;

(13) Describe the procedures which were used to give parents of these children an opportunity to participate in the development of the project application; and

(14) Describe the methods of dissemination of project information.

(Authority: 20 U.S.C. 241c-1)

§ 302.22 Parental participation in the development of the project application.

Each State agency shall provide parents of the children to be served with funds under this part with an opportunity to participate in the development of its project application.

(Authority: 20 U.S.C. 241c-1; 1231d)

§ 302.23 State agency responsibilities.

Each State agency shall:

(a) Coordinate and consult with its State educational agency in the development, implementation, supervision, and evaluation of programs and projects assisted under this part.

(Authority: 20 U.S.C. 241c-1)

[43 FR 16262, Apr. 17, 1978, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 302.24 Children who may be served.

A State agency may use funds under this part only for programs and projects (including the acquisition of equipment and, where necessary, the construction of school facilities) which are designed to meet the special educational needs of handicapped children for whom the State agency is directly responsible for providing free public education.

(Authority: 20 U.S.C. 241c-1)

§ 302.25 Reporting by State agency of children transferring to a local educational agency program.

(a) Each State agency which receives funds under this part shall submit an annual report to the State educational agency of all handicapped children who:

(1) Were counted in average daily attendance under section 121 of the Act during the school year 1971-1972 or in a subsequent year; and

(2) Will leave or have left the special education program operated or supported by that agency in order to participate in a special education program operated or supported by a local educational agency.

(b) The State educational agency shall prescribe the manner of submitting the report.

(c) Each State agency shall insure that the report includes:

(1) The name of each child (or other information used by the State to identify the child),

(2) A description of each child's handicapping condition (or other information used by the State to identify the handicapping condition), and

(3) The name of the local educational agency in which the child will enroll.

(Authority: 20 U.S.C. 241c-1)

Subpart D—Local Educational Agency Participation

§ 302.30 Local educational agency project application.

(a) In order to receive funds under this part, a local educational agency must submit a project application to the State educational agency.

(b) The application must meet the requirements in § 302.21 and include any other information the State educational agency requires to perform its duties under this part.

(c) The State educational agency may reduce the amount of information submitted under § 302.21, if the local educational agency serves five or fewer handicapped children under this part.

(Authority: 20 U.S.C. 241c-1)

§ 302.31 Transfer of funds to local educational agencies.

A local educational agency may receive funds under this part to serve a handicapped child if:

(a) The handicapped child left an educational program for handicapped children operated or supported by a State agency in order to participate in a program operated or supported by the local educational agency;

(b) The child continues to receive an appropriately designed educational program; and

(c) The State agency transfers the funds generated by the child under this part to the local educational agency.

(Authority: 20 U.S.C. 241c-1)

Comment. 1. Under the statute, it is the responsibility of the State agency to transfer funds to a local educational agency. However, under § 302.12, the State educational agency may transfer the funds directly to the local educational agency as the fiscal agent of the State agency.

2. The local educational agency receives funds based on the number of transfer children that it serves. Subpart E provides the rules for counting these children. The local educational agency submits its count to the State educational agency.

3. It should be noted that funds generated by the count of a child in one year are not

available until the following year. Because of this one-year delay in the availability of funds, the determination of which agency (local or State) should receive the funds can become a complex problem. The following clarifications are provided to assist in determining whether or not the transfer of funds to a local educational agency is mandatory.

(a) The local educational agency may receive all funds generated by a child whom the local educational agency counted in the previous year, subject to the compliance by the local educational agency with the requirements of this part.

(b) The State agency may (but is not required to) transfer to the local educational agency funds generated by a child whom the State agency counted in the previous year. For example, the transfer of funds is optional in the following situations:

(1) The State agency counts a child on October 1, and the child enrolls in the local educational agency following that count but during the same school year. The State agency may decide to transfer the funds to the local educational agency when those funds become available (the following year) or may decide to retain those funds for use on other counted handicapped children in that State agency. (If the local educational agency then counts the child, the following year's funds must be transferred.)

(2) The State agency counts a child on October 1 of one school year and the child enrolls in the local educational agency the following school year (the year the funds become available). The State agency may decide to transfer those funds to the local educational agency at the time of the child's enrollment in the local educational agency or may decide to retain those funds for use for other counted handicapped children in that State agency. In examples (1) and (2), uncounted handicapped children may be served on a space available basis (§ 302.55).

Although the transfer of funds to the local educational agency is optional under the examples in paragraph (b) above, the State agency may wish to take into account the following in exercising its option: whether or not the State agency continues to maintain approved projects, the number of children who have left the State agency and who are currently enrolled in a local educational agency, and the number of children in approved projects in the State agency.

(c) If a child has left the local educational agency, § 302.33 governs the use of the funds.

§ 302.32 Local educational agency use of funds.

(a) A local educational agency which receives funds under this part shall use those funds to supplement the appropriately designed education for handicapped children provided by that agency.

(Authority: 20 U.S.C. 241c-1(d))

[43 FR 16262, Apr. 17, 1978, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 302.33 Funds attributable to children who leave the local educational agency.

(a) The State agency shall not transfer funds to a local educational agency if all handicapped children counted under this part cease to be enrolled in that local educational agency.

(b) If a handicapped child counted under this part ceases to be enrolled in the local educational agency, that local educational agency shall notify the State educational agency, and the State educational agency shall require the local educational agency to either:

(1) Retain funds generated by that child under this part to be used for the other handicapped children enrolled in that local educational agency; or

(2) Return all or a portion of those funds to a State agency in which that child was formerly enrolled.

(Authority: 20 U.S.C. 241c-1(d))

§ 302.34 Funds not used by a local educational agency.

If a local educational agency is unable or unwilling to use all or part of the funds available to it under this part, the State educational agency shall transfer the funds to the State agency in which the handicapped children counted under this part were formerly enrolled.

(Authority: 20 U.S.C. 241-1 (c) and (d))

Subpart E—Amount of Grants and Counting Average Daily Attendance

§ 302.40 Amount of grants.

(a) *Formula for determining the amount of grant.* A State agency is eligible to receive an amount of funds as computed under the formula in section 121(b) of the Act.

(Authority: 20 U.S.C. 241c-1(b))

(b) *Minimum payment.* In any fiscal year prior to October 1, 1978, no State shall receive an amount of funds under this part which is less than 100 percent of the amount which that State received in the prior fiscal year under section 121 of the Act.

(Authority: 20 U.S.C. 241c-5)

§ 302.41 Eligibility of children to be counted.

(a) A handicapped child may be counted in average daily attendance for the purpose of computing a grant under section 121(b) of the Act, if;

(1) The child is on the membership roll of a State-operated school,

(2) The child is on the membership roll of a State-supported school; or

(3) (i) The child was counted in average daily attendance by a State agency during the school year 1971-1972 or a subsequent year and is now enrolled in a program operated or supported by a local educational agency;

(ii) The child was enrolled in the State agency school for at least one school year (which may not be less than 180 school days);

(iii) The child continues to receive an appropriately designed educational program; and

(iv) The State agency transfers to the local educational agency in whose program the child is enrolled an amount equal to the sums received by the State agency under this part which are attributable to that child.

(b) There is no minimum number of hours that a child must be receiving educational services per day in order for the child to be eligible to be placed on a membership roll under this section. The length of a school day shall be determined solely by the needs of the handicapped child, as reflected in the child's individualized education program.

(Authority: 20 U.S.C. 241c-1(b))

§ 302.42 Education by more than one agency.

If a handicapped child is receiving free public education from more than one State agency, the State agency which is primarily responsible for the child's education (as determined by the State educational agency) shall be the only State agency to count that child under this part.

(Authority: 20 U.S.C. 241c-1)

§ 302.43 Average daily attendance computation.

For the purposes of this part, average daily attendance means the total membership enrollment of handicapped children who are counted under § 302.41.

(Authority: 20 U.S.C. 241c-1(b))

§ 302.44 Dates for counting and reporting average daily attendance.

(a) *State agency and local educational agency.* Each State agency and local educational agency shall count handicapped children (as specified in § 302.41) on their membership rolls as of October 1 of each year and shall report their average daily attendance to the State educational agency.

(b) *State educational agency.* The State educational agency shall submit a report to the Secretary by the following November 15 which sets forth the information submitted under paragraph (a) of this section.

(Authority: 20 U.S.C. 241c-1 (b) and (d))

§ 302.45 Children counted under section 123.

A handicapped child who is counted in average daily attendance for the purpose of computing a grant under section 123 of the Act (program for neglected or delinquent children) may not be counted under this part.

(Authority: 20 U.S.C. 241c-1(b))

§ 302.46 Children counted under Part B of the Education of the Handicapped Act.

A handicapped child who is counted for the purpose of computing a grant under Part B of the Education of the Handicapped Act may not be counted under this part.

(Authority: 20 U.S.C. 241c-1(b))

Comment. Effective October 1, 1977, section 611 (a)(5)(A)(iii) of Part B of the Education of the Handicapped Act requires that children counted under this part cannot be counted under Part B. (References to other requirements of Part B are in Subpart H.) However, handicapped children who receive special education and related services from a State agency directly responsible for providing them with free public education may be counted under this Part or under Part B. In addition, handicapped children counted or eligible to be counted under this part may be served with Part B funds, if all requirements of Part B are met.

Subpart F—Program Requirements

§ 302.50 The educational program.

(a) Each handicapped child counted under this part must be provided with an educational program designed to meet the child's special educational needs.

(b) The entire amount of funds generated by a child under this part need not be spent on that child, as long as some of the funds are used to meet his or her individual special education needs. The remaining funds generated by that child may be spent on other handicapped children who are enrolled in the State-operated or State-supported school where the child is located, and who were counted under § 302.41.

(c) A project may be supported in whole or in part with funds provided under this part. However, a State agency shall not use funds under this part to pay for its entire educational program for handicapped children.

(Authority: 20 U.S.C. 241 (c) and (d))

Comment. The benefits a child receives must be designed to meet the child's individualized special education needs. For example, the services of a State agency coordinator would not meet this requirement, unless the State agency can document that those services were designed to meet the child's individualized special education needs. Under Part B of the Education of the Handicapped Act, all special education and related services must be provided under an individualized education program. See §§300.340-300.349 of this chapter.

§ 302.51 State standards.

(a) The State educational agency shall have standards insuring that each handicapped child counted under this part receives an appropriately designed education.

(b) The State educational agency shall insure that every child in a State-supported school is provided an education which meets the standards of the State educational agency.

(Authority: 20 U.S.C. 241c-1)

§ 302.52 Maintenance of direction and control.

Each State agency and local educational agency which provides services with funds under this part through contracts with other public or private agencies (such as hospitals, clinics, colleges, universities, and elementary and secondary schools) shall maintain those services under its administrative and supervisory direction and control. A State agency or local educational agency may not provide all those services to handicapped children through contracts with other agencies.

(Authority: 20 U.S.C. 241c-1)

§ 302.53 Dissemination.

Each State agency and local educational agency shall have effective procedures for acquiring and disseminating to teachers, administrators, and parents significant information derived from special educational research, demonstration and similar projects, and for adopting, where appropriate, promising special educational practices developed through these projects for use in program planning and operation under this part.

(Authority: 20 U.S.C. 241c-1)

§ 302.54 Construction and equipment.

(a) Construction undertaken and equipment purchased under this part are subject to the requirements of §§ 200.80 and 200.81 of this chapter.

(b) Each State agency and local educational agency shall insure that appropriately trained staff will be available to use and operate any equipment acquired with funds under this part.

(Authority: 20 U.S.C. 241c-1)

§ 302.55 Participation of children who were not counted.

Children who may be counted under § 302.41 but who were not counted, may participate in projects on a space available basis if:

(a) All children who were counted are receiving benefits from funds made available under this part; and

(b) All children who were counted are receiving an appropriately designed education commensurate with their needs.

(Authority: 20 U.S.C. 241c-1)

§ 302.56 Participation in programs under Part 201.

Nothing in this part precludes handicapped children from participating in projects funded under Part 201 of this chapter.

(Authority: 20 U.S.C. 241c-1)

Subpart G—Allowable Costs

§ 302.60 General.

(a) [Reserved]

(b) *Expenditures.* (1) Each agency may use funds under this part for expenditures which are reasonably necessary for activities directly related to the conduct of programs and projects to meet the special education needs of handicapped children.

(2) Permissible expenditures may include planning, evaluating, and disseminating the results of those activities.

(Authority: 20 U.S.C. 241c-1 and 241g(b))

[43 FR 16262, Apr. 17, 1978, as amended at 45 FR 22531, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980]

§ 302.61 Special education and related services.

(a) Each agency may use funds under this part for the costs of special education and related services for handicapped children.

(b) The State agency may provide agency-wide services (in addition to services located in particular schools) under this part, if it determines that the educational needs of handicapped children will be better served by that method of programming.

(Authority: 20 U.S.C. 241c-1)

§ 302.62 Tuition and services.

(a) *Tuition.* An agency shall not use funds under this part for the payment of tuition or fees.

(b) *Services.* Parents of handicapped children served under this part shall not be charged for special education or related services provided for those children (including the cost of room and board and non-medical care which are provided in an institutional residential care facility in which the child is placed for educational purposes).

(Authority: 20 U.S.C. 241c-1)

§ 302.63 Transportation costs.

Expenditures for transportation of handicapped children are allowable only under the following conditions:

(a) The State educational agency has determined that the transportation is essential to ensure the child's safety or to enable the child to benefit from the special education or the other related services being provided;

(b) The school in which the child is enrolled has made reasonable efforts to secure other means of or resources for transportation of the child;

(c) There is no State law requiring the provision of the service; and

(d) The transportation is not normally provided to other handicapped children by the agency in whose educational program the child is enrolled.

(Authority: 20 U.S.C. 241c-1)

Subpart H—Requirements Under Part B of the Education of the Handicapped Act

§ 302.70 Part B regulations.

Regulations under Part B of the Education of the Handicapped Act are located in Part 300 of this chapter.

(Authority: 20 U.S.C. 1417(b))

Comment. The Secretary advises each recipient to read the relevant regulatory provisions in Part 300, since those regulations provide additional specific rules for meeting the requirements in §§ 302.71 through 302.74.

§ 302.71 Supervision of programs for handicapped children.

Section 612(6) of the Education of the Handicapped Act requires that the State educational agency be responsible for ensuring that all educational programs for handicapped children within the State, including all programs administered by any other State or local agency, are under the general supervision of persons responsible for educational programs for handicapped children in the State educational agency.

(Authority: 20 U.S.C. 1412(6))

§ 302.72 Use of funds for handicapped children.

(a) Section 613(a)(2) of the Education of the Handicapped Act requires each State to insure that funds provided under this part to assist in the education of handicapped children are used only in a manner consistent with a goal of providing a free appropriate public education for all handicapped children.

(b) Paragraph (a) of this section does not limit the requirements of this part or of section 121 of the Act.

(Authority: 20 U.S.C. 1413(a)(2))

§ 302.73 State educational agency standards.

Section 612(6) of the Education of the Handicapped Act requires that any activity to assist the education of handicapped children under this part meet the educational standards of the State educational agency.

(Authority: 20 U.S.C. 1412(6))

§ 302.74 Withholding payments for noncompliance.

(a) Section 616(a)(2)(B) of the Education of the Handicapped Act provides that the Secretary may withhold payments available under this part for assisting the education of handicapped children:

(1) For failure to comply substantially with any provision of section 612 or 613 of the Education of the Handicapped Act; or

(2) In the administration of the annual program plan under Part B of the Education of the Handicapped Act for failure to comply with:

(i) Any provision of Part B of the Education of the Handicapped Act; or

(ii) Any requirements in the application of a local educational agency or intermediate educational unit approved by the State educational agency under that annual program plan.

(b) The Secretary must use the notice and hearing procedures in section 616 of the Education of the Handicapped Act before withholding payments under this section.

(Authority: 20 U.S.C. 1416)

PART 304—REMOVAL OF ARCHITECTURAL BARRIERS TO THE HANDICAPPED PROGRAM

Sec.

Subpart A—General

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AUTHORITY: Sec. 607, Education of the Handicapped Act (20 U.S.C. 1406), Pub. L. 94-142, as amended by Pub. L. 98-199; Sec. 5, 97 Stat. 1358 (Dec. 2, 1983); sec. 101(c), Pub. L. 98-8, 97 Stat. 31-32 (1983).

SOURCE: 50 FR 29330, July 18, 1985, unless otherwise noted.

Subpart A—General

§ 304.1 The Removal of Architectural Barriers to the Handicapped program.

The purpose of this part is to provide financial assistance to State educational agencies and, through them, to local educational agencies and intermediate educational units to remove architectural barriers to the handicapped children and other handicapped individuals.

(Authority: 20 U.S.C. 1406)

§ 304.2 Applicability of regulations in this part.

This part applies to assistance under section 607 of the Education of the Handicapped Act.

(Authority: 20 U.S.C. 1406)

§ 304.3 Regulations that apply to the Removal of Architectural Barriers to the Handicapped program.

The following regulations apply to assistance under the Removal of Architectural Barriers to the Handicapped program:

(a) The regulations in this Part 304.

(b) The Education Department General Administrative Regulations (EDGAR) set out in the following parts of Title 34 of the Code of Federal Regulations—

(1) Part 74 (Administration of Grants):

(2) Part 76 (State-administered Programs);

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1406; 20 U.S.C. 3474(a))

§ 304.4 Definitions

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Application
EDGAR
Fiscal year
Grant
Local educational agency
Project
Public
Secretary
State
State educational agency
Subgrant

(Authority: 20 U.S.C. 3474(a))

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR 300.5(a), 300.7, 300.13, and 300.14:

Handicapped children
Intermediate educational unit
Related services
Special education

(Authority: 20 U.S.C. 1401(a)(1), (16), (17), (22))

(c) *Other definitions that apply to this part.* In addition to the definitions referred to in paragraphs (a) and (b), the following definitions apply to this part:

(1) "Alteration," as applied to a building or structure, means a change or rearrangement in the structural parts or elements, or in the means of egress, or in moving from one location or position to another. It does not include normal maintenance and repair, reroofing, interior decoration, or changes to mechanical and electrical systems.

(Authority: 20 U.S.C. 1406, 41 CFR 101-19.603)

(2) "Equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices,

and books, periodicals, documents, and other related materials.

(Authority: 20 U.S.C. 1401(a)(5), 1406)

§ 304.5 Acronyms that are used.

The following acronyms are used in this part:

"IEU" stands for intermediate educational unit.

"LEA" stands for local educational agency.

"SEA" stands for State educational agency.

(Authority: 20 U.S.C. 1406)

§§ 304.6—304.9 [Reserved]

Subpart B—How Does An SEA Apply for a Grant?

§ 304.10 Submission of an SEA application.

In order to receive funds under this part, an SEA must submit an application to the Secretary for review and approval.

(Authority: 20 U.S.C. 1406)

§ 304.11 Content of SEA application.

(a) Each SEA shall include in its application assurances that—

(1) Funds received under this part will be used to pay the costs of altering existing buildings and equipment in accordance with the standards in § 304.50;

(2) In using funds appropriated under Pub. L. 98-8, special consideration will be given to projects in areas experiencing high rates of unemployment; and

(Authority: Pub. L. 98-8, "Education for the Handicapped", 97 Stat. 27 (1983); S. Rep. No. 17, 98th Cong., 1st Sess. 33-34 (1983))

(3) Funds provided under this part that are appropriated under Pub. L. 98-8 will, to the extent practicable, be utilized in manner which maximizes immediate creation of new employment opportunities to individuals who were unemployed at least 15 of the 26 weeks immediately preceding March 24, 1983 (the date of enactment of Pub. L. 98-8).

(Authority: Pub. L. 98-8, section 101(c); 97 Stat. 31-32 (1983))

(b) Each SEA application must also include the following information:

(1) A description of the goals and objectives to be supported by the grant in sufficient detail for the Secretary to determine what will be achieved with the grant.

(2) The estimated number of LEAs and IEUs that will receive subgrants, and a description of the procedures and criteria the SEA will use to award subgrants to LEAs and IEUs, including any priorities established by the SEA under § 304.51(b) (*see* § 304.40 and Subpart F, "What Conditions Must Be Met by an SEA, LEA, or IEU?").

(Authority: 20 U.S.C. 1406)

§§ 304.12—304.19 [Reserved]

Subpart C—How Does the Secretary Make a Grant to an SEA?

§ 304.20 Amount of an SEA's grant.

(a) For the purpose of this section—

(1) The term "Insular Area" means American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands; and

(2) The term "handicapped children" means the number of handicapped children determined by the Secretary—

(i) Under section 611 of the Act, to be receiving special education and related services; or

(ii) In average daily attendance at schools for handicapped children or supported by a State agency within the meaning of section 146 of Title I of the Elementary and Secondary Education Act of 1965.

(b) The amount of an SEA's grant under this part for a State other than an Insular Area is determined by—

(1) Dividing the number of handicapped children in that State by the total number of handicapped children in all States submitting approvable applications under this part; and

(2) Multiplying that fraction by the amount of funds available for grants under this part.

(c) The Secretary reserves up to one-half of one percent of the aggregate of the amounts available under this part for grants to Insular Areas. Funds reserved by the Secretary for the Insular Areas are allocated proportionately among them on the basis of the number of children ages three through twenty-one in each Insular Area. However, no Insular Area may receive less than $15,000, and allocations within these jurisdictions are ratably reduced, if necessary, to ensure that each Insular Area receives at least that amount. Allocations within these jurisdictions are further ratably reduced if the amount reserved is insufficient to provide $15,000 to each Insular Area.

(Authority: 20 U.S.C. 1406)

§ 304.21 Reallocation of excess funds.

The Secretary may reallocate funds—or portions of those funds—made available to an SEA under this part if the Secretary determines that the SEA cannot use the funds in a manner consistent with the requirements of applicable statutes or this part. Any reallocation is made on the same basis as grants are determined under § 304.20.

(Authority: 20 U.S.C. 1406)

§§ 304.22—304.29 [Reserved]

Subpart D—How Does an LEA or IEU Apply to an SEA for a Subgrant?

§ 304.30 Submission of an application to the SEA.

In order to receive funds under this part for any fiscal year, an LEA or IEU shall submit an application for a subgrant to the appropriate SEA.

(Authority: 20 U.S.C. 1406, 3474(a))

§ 304.31 LEA and IEU applications.

An LEA or IEU shall include in its application any information that is required by the SEA in order to fulfill its responsibilities under this part.

(Authority: 20 U.S.C. 1406, 3474(a))

§§ 304.32—304.39 [Reserved]

Subpart E—How Does an SEA Make a Subgrant?

§ 304.40 Amount of a subgrant to an LEA or IEU.

(a) The SEA shall determine the amount of a subgrant to an LEA or IEU based on—

(1) The size, scope, and quality of the proposed project; and

(2) Any other relevant criteria developed by the SEA and included in the SEA application approved by the Secretary.

(b) The SEA may establish minimum and maximum amounts for subgrants.

(Authority: 20 U.S.C.1406)

§ 304.41 Reallocation of excess funds.

(a) The SEA may reallocate funds provided for subgrants under this part if an LEA or IEU cannot use the funds in a manner consistent with the requirements of section 607 of the Education of the Handicapped Act and the requirements in this part.

(b) The SEA shall reallocate funds in accordance with the criteria and priorities for approving subgrants in its approved application.

(Authority: 20 U.S.C. 1406)

§§ 304.42—304.49 [Reserved]

Subpart F—What Conditions Must Be Met by an SEA, LEA, or IEU?

§ 304.50 Standards for the removal of architectural barriers.

The alteration of existing buildings and equipment under this part must be done consistently with standards adopted by the General Services Administration (GSA) under Pub. L. 90-480, the Architectural Barriers Act of 1968. However, the dimensions set out in those standards may be modified as appropriate considering the age groups of the individuals who will use the buildings or equipment.

NOTE: On August 7, 1984, the GSA adopted new standards under the Architectural Barriers Act (49 FR 31528) and incorporated them by reference at 41 CFR 101-19.603 (49 FR 31625).

(Authority: 20 U.S.C. 1406)

§ 304.51 Project priorities.

(a) An SEA may establish priorities for the use of funds made available under this part. The SEA may, for example, give special consideration to projects that will meet the special needs of urban or rural locations, or that will facilitate the transition of handicapped children and individuals from school to work.

(b) The Secretary encourages States to use their funds for activities that will—

(1) Make available to handicapped children the variety of educational programs and services available to non-handicapped children in the area served by the LEA or IEU;

(2) Provide non-academic and extracurricular services and activities in a manner that affords handicapped children opportunity for participation in those services and activities; and

(3) Provide accessibility to handicapped individuals involved in the education of handicapped children or eligible to participate in programs administered by LEAs and IEUs.

(Authority: 20 U.S.C. 1406)

§ 304.52 Project requirements.

To the extent practicable, funds made available under this part that are appropriated under Pub. L. 98-8 must be utilized to create new employment opportunities for the unemployed, as required by Pub. L. 98-8, section 101(c).

(Authority: Pub. L. 98-8, sec. 101(c); 97 Stat. 31-32 (1983))

§§ 304.53—304.59 [Reserved]

Subpart G—What Are the Administrative Responsibilities of an SEA?

§ 304.60 Amount available for SEA administration.

An SEA may use up to five percent of its grant for the cost of administering funds provided under this part.

(Authority: 20 U.S.C. 1406)

§ 304.61 Administrative responsibilities and allowable costs.

Administrative costs under this part include—

(a) Planning of programs and projects assisted by funds under this part;

(b) Approval, supervision, monitoring, and evaluation by an SEA of the effectiveness of projects assisted by funds made available under this part; and

(c) Technical assistance that an SEA provides to LEAs and IEUs with respect to the requirements of this part.

(Authority: 20 U.S.C. 1406)

§§ 304.62—304.69 [Reserved]

PART 305—REGIONAL RESOURCE CENTERS

Subpart A—General

Sec.

305.1 What is the Regional Resource Centers program?
305.2 Who is eligible to apply for an award under this program?
305.3 What regulations apply to this program?
305.4 What definitions apply to this program?
305.5—305.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

305.10 What kinds of services are required under this part?
305.11 What is the composition of the regions?
305.12 What is a Coordinating Center?
305.13—305.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

305.30 May the Secretary require the Centers to give priority to certain services?
305.31 What are the selection criteria for evaluating applications under the Regional Resource Centers program?
305.32—305.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

305.40 What additional activities must each Regional Resource Center perform?

Sec.
305.41—305.49 [Reserved]

AUTHORITY: Sec. 621 of the Education of the Handicapped Act (20 U.S.C. 1421), unless otherwise noted.

SOURCE: 49 FR 25997, June 25, 1984, unless otherwise noted.

Subpart A—General

§ 305.1 What is the Regional Resource Centers program?

This program supports the establishment and operation of Regional Resource Centers that assist State educational agencies and, through those State agencies, local educational agencies, in developing quality programs and services for all handicapped children, by providing consultation, technical assistance, and training.

(Authority: 20 U.S.C. 1421)

§ 305.2 Who is eligible to apply for an award under this program?

The Secretary may provide assistance under this part through a grant to, or cooperative agreement or contract with—

(a) Institutions of higher education;

(b) Private nonprofit organizations;

(c) State educational agencies; or

(d) Combinations of those agencies and institutions. Such a combination may include one or more local educational agencies within particular regions of the United States.

(Authority: 20 U.S.C. 1421)

§ 305.3 What regulations apply to this program?

The following regulations apply to grants and cooperative agreements under the Regional Resource Centers program:

(a) The regulations in this Part 305.

(b) The Education Department General Administration Regulations (EDGAR) established in Title 34 of the *Code of Federal Regulations* in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1421; 20 U.S.C. 3474(a))

§ 305.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Contract
EDGAR
Fiscal Year
Grant
Grant period
Local educational agency
Nonprofit
Private
Project
Project period
Public
Secretary
State
State educational agency

(Authority: 20 U.S.C. 1421; 20 U.S.C. 3474(a))

§§ 305.5—305.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 305.10 What kinds of services are required under this part?

(a) Each Regional Resource Center must—

(1) Assist States, through services such as consultation, technical assistance, and training, to provide more effectively special education and related services to handicapped children and youth;

(2) Assist in identifying and solving persistent problems in providing quality special education and related services to handicapped children and youth;

(3) Assist in developing, identifying, and replicating successful programs and practices which will improve special education and related services to handicapped children and youth and their families;

(4) Gather and disseminate information to all State educational agencies in the region and coordinate activities with other Regional Resource Centers and with other relevant projects conducted by the Department of Education; and

(5) Assist in the improvement of information dissemination to, and training activities for, professionals and parents of handicapped children.

(b) A Regional Resource Center may conduct research, innovation, training, or dissemination activities, consistent with the purposes of section 624 of the Act and the requirements in 34 CFR Part 315.

(Authority: 20 U.S.C. 1421)

§ 305.11 What is the composition of the regions?

The Secretary establishes the following regions:

(a) Region 1: Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, and New Jersey.

(b) Region 2: Maryland, Delaware, Virginia, West Virginia, Washington, D.C., Kentucky, Tennessee, North Carolina, and South Carolina.

(c) Region 3: Georgia, Alabama, Florida, Mississippi, Puerto Rico, the Virgin Islands, New Mexico, Texas, Oklahoma, Arkansas, and Louisiana.

(d) Region 4: Illinois, Ohio, Indiana, Pennsylvania, Wisconsin, Minnesota, and Michigan.

(e) Region 5: Montana, Wyoming, North Dakota, South Dakota, Utah, Colorado, Nebraska, Kansas, Iowa, Missouri, and the Bureau of Indian Affairs.

(f) Region 6: Oregon, Idaho, Washington, Alaska, California, Arizona, Nevada, the Trust Territory of the Pacific Islands, Guam, American Samoa, Hawaii, and the Northern Mariana Islands.

(Authority: 20 U.S.C. 1421)

§ 305.12 What is a Coordinating Center?

(a) The Secretary may establish a Coordinating Center to ensure the coordination of activities and services of the Regional Resource Centers with—

(1) The other Regional Resource Centers; and

(2) Other relevant projects carried out or assisted by the Department of Education.

(b) The Coordinating Center may include any combination of the regions, States, or territories listed in § 305.11.

(Authority: 20 U.S.C. 1421, 1424)

§§ 305.13—305.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 305.30 May the Secretary require the Centers to give priority to certain services?

For any fiscal year, the Secretary may, in the application notice, require the Centers to give priority to one or more of the services listed in § 305.10.

(Authority: 20 U.S.C. 1421)

§ 305.31 What are the selection criteria for evaluating applications under the Regional Resource Centers program?

The Secretary uses the criteria in this section to evaluate applications for new grants. The maximum number of points for each criterion is stated in parentheses. The maximum score for all of the criteria is 100 points.

(a) *Need for the project.* (5 points)

(1) The Secretary reviews each application for information that shows the need for a Center in the region to be served by the applicant.

(2) In making this determination, the Secretary considers information that shows the support for the applicant's project by the agencies to be served by the project.

(b) *Capability of applicant.* (5 points)

(1) The Secretary reviews each application for information that shows the capability of the applicant to fulfill the responsibilities of a Center under this part.

(2) In making this determination, the Secretary considers evidence of relevant experience which demonstrates the capacity to provide technical assistance to State educational agencies, commitment to the accomplishment of the project, and timely

completion of previous comparable work.

(c) *Plan of operation.* (40 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(d) *Quality of key personnel.* (25 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d) (1) and (2) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(See 34 CFR 75.590, Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and to the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Authority: 20 U.S.C. 1421)

§§ 305.32—305.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 305.40 What additional activities must each Regional Resource Center perform?

Each Regional Resource Center must—

(a) Report a summary of materials produced or developed in the manner and at the time the Secretary may establish; and

(b) Assist in the evaluation of the effectiveness of Regional Resource Center activities through cooperation with other projects under this part and with other appropriate projects such as the program evaluations under section 627 of the Act.

(Authority: 20 U.S.C. 1421(c))

§§ 305.41—305.49 [Reserved]

PART 307—SERVICES FOR DEAF-BLIND CHILDREN AND YOUTH

Subpart A—General

Sec.

307.1 What is the Services for Deaf-Blind Children and Youth program?
307.2 Who is eligible to apply for an award under the Services for Deaf-Blind Children and Youth program?
307.3 What regulations apply to the Services for Deaf-Blind Children and Youth program?
307.4 What definitions apply to the Services for Deaf-Blind Children and Youth program?
307.5—307.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

307.10 What types of activities are considered for support under this part?
307.11 What types of services to deaf-blind children and youth and technical assistance are considered for support under this part?
307.12 What types of technical assistance to grantees under § 307.11 are considered for support under this part?
307.13 What types of technical assistance for transitional services are considered for support under this part?

Sec.

307.14 What types of data analysis activities are considered for support under this part?
307.15 What types of dissemination activities are considered for support under this part?
307.16—307.19 [Reserved]

Subpart C—How Does One Apply for a Grant?

307.20 What is the content of an application under this program?
307.21—307.29 [Reserved]

Subpart D—How Does the Secretary Make a Grant?

307.30 What priorities are considered for support by the Secretary?
307.31 What are the selection criteria used to award a grant?
307.32—307.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee Under This Program?

307.40 What is the reporting responsibility of a grantee under this program?
307.41 What advisory committees are to be established under this program?
307.42 What responsibility does an SEA grantee have to obtain technical assistance?
307.43—307.49 [Reserved]

AUTHORITY: Sec. 622 of the Education of the Handicapped Act (20 U.S.C 1422), unless otherwise noted.

SOURCE: 49 FR 28364, July 11, 1984, unless otherwise noted.

Subpart A—General

§ 307.1 What is the Services for Deaf-Blind Children and Youth program?

This program supports projects that enhance services to deaf-blind children and youth, particularly by providing technical assistance to State educational agencies and others who are involved in the education of deaf-blind children and youth.

(Authority: 20 U.S.C. 1422)

§ 307.2 Who is eligible to apply for an award under the Services for Deaf-Blind Children and Youth program?

Public or nonprofit private agencies, institutions, or organizations may apply for an award under this part.

(Authority: 20 U.S.C. 1422)

§ 307.3 What regulations apply to the Services for Deaf-Blind Children and Youth program?

The following regulations apply to this program:

(a) The regulations in this Part 307.

(b) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1422; 20 U.S.C. 3474(a))

§ 307.4 What definitions apply to the Services for Deaf-Blind Children and Youth program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
EDGAR
Grant
Grantee
Nonprofit
Private
Project
Public
Secretary
State

(Authority: 20 U.S.C. 3474(a))

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR Part 300:

Counseling services (§ 300.13(b)(2))
Deaf-blind (§ 300.5(b)(2))
Evaluation (§ 300.500(c))
Free appropriate public education (§ 300.4)
Handicapped children (§ 300.5)
Parent (§ 300.10)
Parent counseling and training (§ 300.13(b)(6))
Public agency (§ 300.11)
Related services (§ 300.13)
Special education (§ 300.14)

(Authority: 20 U.S.C. 1401 (1), (16), (17), (18))

§§ 307.5—307.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 307.10 What types of activities are considered for support under this part?

The Secretary may provide financial assistance under this part to support the following activities:

(a) Services to deaf-blind children and youth, and technical assistance to SEAs, as described in § 307.11;

(b) Technical assistance to grantees under § 307.11, as described in § 307.12;

(c) Technical assistance for transitional services, as described in § 307.13;

(d) Data analysis activities, as described in § 307.14; and

(e) Dissemination activities, as described in § 307.15.

(Authority: 20 U.S.C. 1422)

§ 307.11 What types or services to deaf-blind children and youth and technical assistance are considered for support under this part?

(a) The Secretary may provide financial assistance under this part to support the following projects:

(1) Special education and related services, as well as vocational and transitional services, to deaf-blind children and youth to whom States are not obligated to make available a free appropriate public education under Part B of the Education of the Handicapped Act and to whom the State is not providing those services under some other authority. These services may include the following:

(i) Diagnosis and educational evaluation of children and youth at risk of being identified as deaf-blind.

(ii) Programs of adjustment, education, and orientation for deaf-blind children and youth.

(iii) Consultative, counseling, and training services for families of those deaf-blind children and youth being served under this part.

(2) Technical assistance to State educational agencies to assure that they may more effectively—

(i) Provide special education and related services, as well as vocational and transitional services, to those deaf-blind children and youth to whom they are obligated to make available a free appropriate public education under Part B of the Education of the Handicapped Act or some other authority;

(ii) Provide preservice or inservice training to paraprofessionals, professionals or related services personnel preparing to serve, or serving, deaf-blind children or youth;

(iii) Replicate successful, innovative approaches to providing educational or related services to deaf-blind children and youth;

(iv) Facilitate parental involvement in the education of their deaf-blind children and youth; and

(v) Provide consultative and counseling services for professionals, paraprofessionals, parents, and others who play a direct role in the lives of deaf-blind children and youth, to enable them to understand the special problems of those children and youth, and to assist in the provision of appropriate services to those children and youth.

(3) The services described in paragraph (a)(1) of this section to deaf-blind children and youth to whom a State is obligated to make available a free appropriate public education under Part B of the Education of the Handicapped Act and to whom the State is providing those services under some other authority.

(b)(1) Each grantee under this section shall—

(i) Give first priority in the use of project funds to the provision of services described in paragraph (a)(1) of this section; and

(ii) Give second priority in the use of project funds to the provision of technical assistance to State educational agencies, as described in paragraph (a)(2) of this section.

(2) Any remaining funds may be used by the grantee, upon request of the State educational agency, for the services described in paragraph (a)(3) of this section.

(c) Each grantee under this section shall—

(1) Develop and implement procedures to evaluate the effectiveness of services to deaf-blind children and youth which it provides under paragraph (a)(1) of this section; and

(2) Provide technical assistance to the State educational agencies served under paragraph (a)(2) of this section in the development and implementation of procedures for evaluating the effectiveness of services provided by those agencies to deaf-blind children and youth.

(d) For the purpose of making awards under § 307.11, the Secretary establishes the following geographic regions:

Region	States included in region
1	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands.
2	Delaware, District of Columbia, Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.
3	Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, New Mexico, Oklahoma, and Texas.
4	Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, and Wisconsin.
5	Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.
6	Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, the Northern Mariana Islands, Oregon, the Trust Territory of the Pacific Islands, and Washington.

(e) The Secretary may make more than one award within any region described in paragraph (d) of this section.

(Authority: 20 U.S.C. 1422)

§ 307.12 What types of technical assistance to grantees under § 307.11 are considered for support under this part?

(a) The Secretary may provide financial assistance under this part for projects that establish and support programs for the provision of technical assistance, on a regional basis, to grantees under § 307.11 with respect to the provision of direct services to deaf-blind children and youth under § 307.11(a)(1).

(b) Each grantee under this section shall assist grantees under § 307.11 to—

(1) Enhance personnel training programs by, for example, making available the combined expertise of highly trained and experienced professionals

from the fields of education for deaf-blind and severely handicapped children and youth;

(2) Apply effective and relevant educational research findings; and

(3) Replicate effective methodology and curricula in educating deaf-blind children and youth.

(Authority: 20 U.S.C. 1422)

§ 307.13 What types of technical assistance for transitional services are considered for support under this part?

(a) The Secretary may provide financial assistance under this part to provide technical assistance to State educational agencies in making available to deaf-blind youth, upon attaining the age of 22, programs and services to facilitate their transition from education to employment and other services such as vocational, independent living, and other postsecondary services.

(b) Each grantee under this section must provide each of the following services:

(1) Technical assistance to agencies institutions, and organizations (in addition to State educational agencies) providing, or proposing to provide, transitional services to deaf-blind youth who have attained the age of 22.

(2) Training or inservice training to paraprofessionals or professionals serving, or preparing to serve, those youth, as well as training to their parents.

(3) Assistance in the development or replication of successful innovative approaches to providing rehabilitative, semi-supervised, or independent living programs.

(c) As used in this section, the term "transitional services" includes—

(1) Counseling, training, and other services to assist deaf-blind youth to adjust to work environments and employment options;

(2) Information concerning relevant public services available to assist deaf-blind youth in transition from educational to other services, including, recreational and leisure time resources, rehabilitative, semi-supervised, or independent living programs, and the procedures for assessing those services; and

(3) Assistance to relevant agencies in the development of individualized work-related plans for deaf-blind youth.

(d) Each grantee under this section shall develop and implement strategies to promote coordination between State and local agencies providing services to deaf-blind youth 22 years of age and older, including agencies providing rehabilitative, vocational, health, career planning and development, and social services, and agencies providing a range of supervised and unsupervised living options.

(e) Each grantee under this section shall assess the effectiveness of the project in facilitating the transition of deaf-blind children and youth from education to employment and other services such as vocational, independent living, and other postsecondary services.

(Authority: 20 U.S.C. 1422)

§ 307.14 What types of data analysis activities are considered for support under this part?

(a) The Secretary may provide financial assistance under this part to support projects that—

(1) Analyze the data reported annually by grantees under this part and under other provisions of the Education of the Handicapped Act; and

(2) Provide an unduplicated count of the number of deaf-blind children and youth directly served under § 307.11(a)(1) and by State educational agencies receiving technical assistance under §§ 307.11(a)(2) and 307.12.

(b)(1) The grantee must compare the count with the number of deaf-blind children and youth reported by the States under Part B of the Education of the Handicapped Act; the Deaf-Blind Registry; and subpart 2 of Part B, Title I of the Elementary and Secondary Education Act of 1965 (as modified by Chapter 1 of the Education Consolidation and Improvement Act of 1981).

(2) The grantee must then revise the count to reflect the most accurate data, accounting for possible sources of discrepancy in the data.

(Authority: 20 U.S.C. 1422(c)(2))

§ 307.15 What types of dissemination activities are considered for support under this part?

The Secretary may provide financial assistance under this part to support projects that disseminate materials and information to parents, professionals, and other interested parties concerning effective practices in working with deaf-blind children and youth, including information on—

(a) Special education, related, vocational, and transitional services and resources;

(b) Options for training and experience in daily living skills programs;

(c) The nature of various conditions of deaf-blindness and their educational and employment implications;

(d) Legal issues affecting deaf-blind children and youth; and

(e) Financial planning and other concerns affecting deaf-blind children and youth.

(Authority: 20 U.S.C. 1422(d))

§§ 307.16—307.19 [Reserved]

Subpart C—How Does One Apply for a Grant?

§ 307.20 What is the content of an application under this program?

(a) Each applicant for a grant under § 307.11 must include in its application—

(1) A statement from each State the applicant proposes to serve indicating the State's desire to cooperate with, and receive services from, the applicant; and

(2) For each State in which the applicant proposes to provide services, information on the State's progress in developing a comprehensive plan for the delivery of special education and related services, as well as vocational and transitional services, to all deaf-blind children and youth in the State to whom it is required to make available a free appropriate public education under Part B of the Education of the Handicapped Act. This information may include—

(i) An explanation of how relevant activities proposed in the State's plan under Part B of the Education of the Handicapped Act have been and will be taken into account in the proposed project; and

(ii) A description of activities proposed and other relevant planning activities in the State supported under section 624 of the Education of the Handicapped Act.

(b) Each applicant for a grant under § 307.13 must include in its application a statement from each State the applicant proposes to serve indicating the State's desire to cooperate with, and receive services from, the applicant in order to facilitate the transition of deaf-blind youth from education to employment and other services such as vocational, independent living, and other postsecondary services.

(Authority: 20 U.S.C. 1422)

(Approved by the Office of Management and Budget under OMB control noumber 1820-0028)

§§ 307.21—307.29 [Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 307.30 What priorities are considered for support by the Secretary?

(a) The Secretary may select as annual priorities one or more of the types of projects listed in § 307.10.

(b) The Secretary advises the public of these priorities through an application notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1422)

§ 307.31 What are the selection criteria used to award a grant?

The Secretary uses the weighted criteria in this section to evaluate applications for new awards. The maximum score for all the criteria is 100 points.

(a) *Plan of operation.* (40 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(See 34 CFR 75.590, *Evaluation by the grantee*)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Capability of applicant agency.* (10 points) The Secretary reviews each application for information that shows the capability of the applicant public or nonprofit agencies, organizations, or institutions in conducting activities which have significant relevance to the proposed project.

(g) *Dissemination plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the dissemination plan for the project.

(2) The Secretary looks for information that shows—

(i) An effective plan to disseminate project information within the State in which the project is located and to make available to the relevant grantee under § 307.15 significant project information for appropriate dissemination of such information throughout the Nation; and

(ii) A clear description of the content, intended audiences, and timelines for production of all documents and other products proposed for development by the project.

(h) *Cooperation and coordination with other organizations and institutions.* (10 points)

(1) The Secretary reviews each application for information that ensures that activities funded under this section will be coordinated with—

(i) Similar activities funded from grants, contracts, and cooperative agreements awarded under Parts C, D, and E of the Act;

(ii) Other agencies, organizations, and institutions conducting or eligible to conduct activities essential to the effective implementation of the application being considered; and

(iii) The dissemination of materials and information concerning the education of deaf-blind children and youth required under the clearinghouses authorized under section 633 of Part D of the Act.

(2) The Secretary looks for information that shows the nature, extent, and timeliness for coordinated interaction which the applicant has had and proposes to have to facilitate implementation of project activities and continuation of these activities after termination of Federal funding.

(Authority: 20 U.S.C. 1422)

§§ 307.32—307.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee Under This Program?

§ 307.40 What is the reporting responsibility of a grantee under this program?

Each grantee under §§ 307.11 and 307.12 of this part must report annually to the Secretary—

(a) The numbers, age, severity, and nature of deaf-blindness of deaf-blind children and youth served by the project;

(b) The number of professionals, paraprofessionals, and family members directly served by the project; and

(c) The types of services provided.

(Authority: 20 U.S.C. 1422(c)(1))

§ 307.41 What advisory committees are to be established under this program?

Each grantee under this part shall establish and maintain an advisory committee for the project. Each committee must include at least one parent of a deaf-blind child or youth, a representative of the State educational agency in the State in which the grantee is located, a limited number of professionals with training and experience in serving deaf-blind children and youth, and other individuals representing related agencies and organizations. These committees may participate in such activities as—

(a) Planning, development, and operation of the project; and

(b) Dissemination of information regarding the project's activities.

(Authority: 20 U.S.C. 1422)

§ 307.42 What responsibility does an SEA grantee have to obtain technical assistance?

A State educational agency that receives a grant under § 307.11 of this part, and that is not providing technical assistance to other agencies or organizations under the grant, must obtain from an outside source any technical assistance that it needs to carry out its project.

(Authority: 20 U.S.C. 1422)

§§ 307.43—307.49 [Reserved]

PART 309—HANDICAPPED CHILDREN'S EARLY EDUCATION PROGRAM

Subpart A—General

Sec.

309.1 What is the Handicapped Children's Early Education Program?
309.2 Who is eligible to apply for funds under the Handicapped Children's Early Education Program?
309.3 What regulations apply to the Handicapped Children's Early Education Program?
309.4 What definitions apply to the Handicapped Children's Early Education Program?
309.5—309.9 [Reserved]

Sec.

Subpart B—What Kinds of Demonstration and Outreach Projects May Be Supported Under this Part?

309.10 What types of demonstration and outreach projects does the Handicapped Children's Early Education Program support?
309.11—309.19 [Reserved]

Subpart C—How Does One Apply for Demonstration or Outreach Projects?

309.20 What must be included in applications for demonstration projects?
309.21 What are the application requirements for outreach projects?
309.22—309.29 [Reserved]

Subpart D—How Does the Secretary Make a Grant for a Demonstration or Outreach Project?

309.30 How does the Secretary select priorities for demonstration or outreach projects?
309.31 What are the priorities for demonstration projects?
309.32 What are the priorities for outreach projects?
309.33 What are the selection criteria for demonstration and outreach projects?
309.34 Are awards for demonstration and outreach projects geographically dispersed?
309.35—309.39 [Reserved]

Subpart E—What Conditions Must Be Met by Demonstration or Outreach Grantees?

309.40 What conditions must be met by demonstration or outreach grantees?
309.41—309.49 [Reserved]

Subpart F—What Kinds of Early Childhood State Plan Projects May Be Supported Under this Part?

309.50 General.
309.51 What is the Early Childhood State Planning Grant?
309.52 What is an Early Childhood State Development Grant?
309.53 What is an Early Childhood State Implementation Grant?
309-54 What are the other Early Childhood State Plan application requirements?
309.55—309.59 [Reserved]

AUTHORITY: Sec. 623 of the Education of the Handicapped Act (20 U.S.C. 1423), unless otherwise noted.

SOURCE: 49 FR 28353, July 11, 1984, unless otherwise noted.

Subpart A—General

§ 309.1 What is the Handicapped Children's Early Education Program?

The purposes of this program are to—

(a) Assist eligible parties in developing and implementing experimental preschool and early education programs for children from birth through eight years of age; and

(b) Assist States in developing and implementing a comprehensive delivery system that provides special education and related services to handicapped children from birth through five years of age.

(Authority: 20 U.S.C. 1423)

§ 309.2 Who is eligible to apply for funds under the Handicapped Children's Early Education Program?

Eligible parties for demonstration and outreach projects are listed in § 309.10(b). Eligible parties for Early Childhood State Plan projects are listed in § 309.50.

(Authority: 20 U.S.C. 1423)

§ 309.3 What regulations apply to the Handicapped Children's Early Education Program?

The following regulations apply to assistance under this program:

(a) The regulations in this Part 309.

(b) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities.

(Authority: 20 U.S.C. 1423; 20 U.S.C. 3474(a))

§ 309.4 What definitions apply to the Handicapped Children's Early Education Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Local educational agency
Nonprofit
Nonpublic
Preschool
Private
Project
Public
Secretary
State
State educational agency

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR Part 300:

Handicapped children (§ 300.5)
Parent (§ 300.10)
Related services (§ 300.13)
Special education (§ 300.14)

(c) *Other definitions.* "Act" means the Education of the Handicapped Act (20 U.S.C. 1401 *et seq.*).

(Authority: 20 U.S.C. 1423; 20 U.S.C. 3474(a))

§§ 309.5—309.9 [Reserved]

Subpart B—What Kinds of Demonstration and Outreach Projects May Be Supported Under This Part?

§ 309.10 What types of demonstration and outreach projects does the Handicapped Children's Early Education Program support?

(a) The Handicapped Children's Early Education Program supports experimental preschool and early education programs for handicapped children. These programs are intended to promote a comprehensive service delivery system to meet the special needs of handicapped children from birth through eight years of age.

(1) *Demonstration projects.* These projects assist in developing and implementing innovative and experimental practices that establish specific strategies and products worthy of dissemination and replication.

(2) *Outreach projects.* These projects support the replication of established practices to assist other agencies and organizations in expanding and improving services to handicapped children.

(b) *Eligibility*—(1) *Demonstration projects.* Parties eligible to receive assistance for demonstration projects are public or nonprofit private agencies, organizations, or institutions.

(2) *Outreach projects.* Parties eligible to receive assistance for outreach projects are public or nonprofit private agencies, organizations, or institutions that—

(i) Have completed demonstration projects assisted under the Handicapped Children's Early Education program, or projects assisted with other Federal, State, local, private or nonprofit funding sources that have achieved effective results with children; and

(ii) Have continued the demonstration project program model with local, State, or other funding other than under this part.

(c) *Matching requirements.* Federal financial participation for projects assisted under this section may not exceed 90 percent of the total annual costs of development, operation, and evaluation of any project.

(Authority: 20 U.S.C. 1423(a))

§§ 309.11—309.19 [Reserved]

Subpart C—How Does One Apply for Demonstration or Outreach Projects?

§ 309.20 What must be included in applications for demonstration projects?

(a) An applicant for a demonstration project under this part shall include in its application—

(1) Demographic information about the population to be served, including the handicapping conditions of the children;

(2) The criteria which will be used to determine whether a child is handicapped (as defined in 34 CFR 300.5) for the purpose of participating in the project;

(3) The curriculum design;

(4) A description of the services, including related services, to be made available to the participating children;

(5) A description of the procedures for assessing the progress of the participating children;

(6) A description of the provisions for parent and family participation;

(7) A description of the provisions for training project personnel, parents, and caretakers;

(8) A description of proposed activities to disseminate and to promote the adoption of the program model by other agencies;

(9) The plans for evaluation of the project's effectiveness;

(10) The plans for continuation of the program from sources other than this part; and

(11) An assurance that provisions will be made for coordination with State and local educational agencies, and appropriate public and private health and social service agencies, in order to—

(i) Inform those agencies of the nature and purposes of the assisted project's program;

(ii) Provide opportunities for the project staff to coordinate their activities with the staff of those agencies;

(iii) Use available services in order to provide a comprehensive program which avoids duplication of effort;

(iv) Facilitate the dissemination of knowledge about the program;

(v) Develop mechanisms for future adoption or adaptation of program components;

(vi) Relate the program to State and local planning;

(vii) Provide liaison between early childhood programs and local school programs for children progressing from one to the other; and

(viii) Encourage continued active parental participation in the educational progress of handicapped children.

(b) Each applicant for a demonstration project shall include the information under paragraph (a) of this section in the description of the program conducted at each demonstration site.

(Authority: 20 U.S.C. 1423(a))

§ 309.21 What are the application requirements for outreach projects?

An applicant for an outreach project under this part shall include in its application—

(a) A list of the agencies to be served through the outreach activities;

(b) For each agency listed, a description that includes—

(i) The nature and scope of the agency's current services;

(ii) How those services will be affected through outreach activities;

(iii) The anticipated impact of outreach assistance; and

(iv) Evidence that the agency is interested in cooperating with the applicant's outreach activities;

(c) A description of the model program upon which their demonstration project is based, including evidence of the effectiveness of the model program with children, parents, or other recipients of the model program's services;

(d) An assurance that services provided to handicapped children under the applicant's demonstration project will be continued by the applicant and supported by funds other than funds made available under this part;

(e) A statement of—

(i) The amount and sources of funding for continued project support (cash and in-kind);

(ii) The number of children to be involved;

(iii) The number of personnel to be involved; and

(iv) The location for the delivery of services;

(f) Evidence of the need and demand for the proposed outreach activities;

(g) Evidence of the applicant's experience in working with other agencies in activities related to early education of handicapped children; and

(h) A description and samples of any early educational materials to be used in the proposed project.

(Authority: 20 U.S.C. 1423(a))

(Approved by the Office of Management and Budget under control number 1820-0028)

§§ 309.22—309.29 [Reserved]

Subpart D—How Does the Secretary Make a Grant for a Demonstration or Outreach Project?

§ 309.30 How does the Secretary select priorities for demonstration or outreach projects?

(a) The Secretary may select annually one or more priorities or combinations of priorities from among those listed in §§ 309.31 and 309.32. The Secretary advises the public of these priorities through an application notice published in the Federal Register.

(b) If an application contains activities which address both a priority and a nonpriority area, the Secretary considers for support only those activities that address the priority.

(Authority: 20 U.S.C. 1423(a))

§ 309.31 What are the priorities for demonstration projects?

In selecting demonstration projects, the Secretary may give priority to applications for innovative, experimental projects that—

(a) Serve children with specific handicapping conditions for whom the Secretary determines that demonstration models are lacking;

(b) Provide services in the least restrictive environment which facilitate entry into the regular school system;

(c) Provides services in underserved, rural, or urban areas, especially projects that serve ethnic and linguistic minority group handicapped children and migrant handicapped children;

(d) Serve newborns, infants, and other children under three years of age;

(e) Serve economically disadvantaged handicapped children;

(f) Develop models for the delivery of comprehensive services that may be incorporated into an Early Childhood State Plan under Subpart F of this part;

(g) Utilize technological devices and systems for educating handicapped children; or

(h) Ensure the use of validated procedures for assessment of handicapped children and evaluation of early childhood programs.

(Authority: 20 U.S.C. 1423(a))

§ 309.32 What are the priorities for outreach projects?

In selecting outreach projects, the Secretary may give priority to applications for projects that—

(a) Assist other agencies and organizations in the development and implementation of comprehensive delivery systems for handicapped children that may be incorporated into Early Childhood State Plans under Subpart F of this part;

(b) Provide quality training and other assistance and general support services to regions, States, or geographical areas where handicapped children from birth through five years of age are unserved or underserved, especially projects that serve ethnic and linguistic minority group handicapped children, economically disadvantaged, and migrant handicapped children;

(c) Stimulate the provision of services and provide training in rural areas; or

(d) Stimulate the provision of services and provide training based upon recent research findings and information from the fields of special education, child development, pediatrics, and other areas appropriate to early childhood education.

(Authority: 20 U.S.C. 1423(a))

§ 309.33 What are the selection criteria for demonstration and outreach projects?

The Secretary uses the weighted criteria in this section to evaluate applications for new awards for demonstration and outreach projects. The maximum score for all the criteria is 100 points.

(a) *Plan of operation.* (40 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (15 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(Authority: See 34 CFR 75.590 *Evaluation by the grantee*)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Authority: 20 U.S.C. 1423(a))

§ 309.34 Are awards for demonstration and outreach projects geographically dispersed?

As much as is feasible, the Secretary, in addition to using the selection criteria in § 309.33, geographically disperses awards for demonstration and outreach projects throughout the Nation in urban as well as rural areas.

(Authority: 20 U.S.C. 1423(a)(3))

§§ 309.35—309.39 [Reserved]

Subpart E—What Conditions Must Be Met by Demonstration or Outreach Grantees?

§ 309.40 What conditions must be met by demonstration or outreach grantees?

(a) Each grantee conducting a demonstration or outreach project must—

(1) Ensure that the activities and services provided by the project facilitate the early intellectual, emotional, physical, mental, social, and language development of handicapped children;

(2) Coordinate with similar programs in the schools operated or supported by State or local educational agencies of the community or communities to be served;

(3) Acquaint the community to be served by the project with the problems and potentialities of handicapped children;

(4) Ensure the use of validated procedures for assessment and evaluation of early childhood programs; and

(5) Actively involve parents of handicapped children in the project.

(b) No grantee may collect fees or other charges from the parents of any child participating in activities assisted under this part.

(Authority: 20 U.S.C. 1423(a))

§§ 309.41—309.49 [Reserved]

Subpart F—What Kinds of Early Childhood State Plan Projects May Be Supported Under This Part?

§ 309.50 General.

(a) The Secretary makes a grant to each State, through the State educational agency or other responsible State agency, to assist the State in planning, developing, or implementing an Early Childhood State Plan for a comprehensive delivery system of special education and related services to handicapped children from birth through five years of age. The Secretary makes one of the grants described in §§ 309.51-309.53 to any State which submits an application that meets the requirements of this subpart.

(b) A comprehensive service delivery system includes—

(1) A statewide system for identifying and locating, as early as possible, children who are handicapped or at risk of being handicapped. This includes the prenatal period if there is evidence that a child will be born handicapped;

(2) Comprehensive and continuing assessment and diagnosis of children who are identified as handicapped or at risk of being handicapped;

(3) Special education and related services appropriate to each handicapped child's developmental level and handicapping condition;

(4) A continuum of alternative placements to meet the individual needs of handicapped children for special education and related services;

(5) Involvement of parents in the planning, development, and implementation of the education and services provided to their handicapped children;

(6) A personnel development program to ensure appropriately trained instructional and supportive staff;

(7) Coordination of the activities of educational, health, social services, and other agencies to ensure effective use of available services and to relate service delivery programs to State and local planning;

(8) Information concerning the needs of handicapped children and the availability of services; and

(9) Ongoing evaluation of the effectiveness of the services and programs provided to handicapped children and others involved in their education and care.

(c) A joint application may be submitted by two or more agencies if they have shared or concurrent responsibility for serving handicapped children from birth through five years of age (*see* 34 CFR 75.127-75.129).

(d) As used in this subpart, a "responsible State agency" is the State educational agency or other organizational unit that has direct or delegated authority under State law or policy to provide special education and related services to handicapped children from birth through five years of age.

(Authority: 20 U.S.C. 1423(b))

§ 309.51 What is an Early Childhood State Planning Grant?

(a) *Purpose.* An Early Childhood State Planning Grant is awarded to assess the educational and related services needed by handicapped children within the State from birth through five years of age and to establish a procedure and design for the development of an Early Childhood State Plan.

(b) *Application contents.* An applicant for a State Planning Grant shall include in its application—

(1) A copy of the needs assessment on which the Early Childhood State Plan will be based, or a description of the needs assessment to be undertaken as a basis for the plan; and

(2) A statement of the project's goals and objectives, the preliminary plans and procedures for designing a plan, and the activities to be implemented, in order to—

(i) Identify and develop interagency collaborative efforts at State and local levels;

(ii) Develop and maintain systems to enhance management and administration for the provision of services to handicapped children from birth through five years;

(iii) Establish and maintain standards, including regulations, legislation, and policy, for making available services to handicapped children from birth through five years;

(iv) Assist in the planning, development, and implementation of training for families, caretakers, and professionals at the State and local levels;

(v) Identify possible financial resources for the identification, evaluation, placement, and provision of services for handicapped children from birth through five years;

(vi) Provide statewide awareness of services for handicapped children; and

(vii) Establish evaluation criteria for assessing the effectiveness of the planning activities.

(Authority: 20 U.S.C. 1423(b)(2)(A))

§ 309.52 What is an Early Childhood State Development Grant?

(a) *Purpose.* An Early Childhood State Development Grant is awarded to a State which has successfully completed planning activities to—

(1) Develop a comprehensive State plan; and

(2) Gain approval of the plan from the State Board of Education, the Commissioner of Education, or other designated official of the appropriate State agency.

(b) *Application contents.* An applicant for the State Development Grant shall include in its application—

(1) A description of the completed planning activities (such as those described in § 309.51) which demonstrates the applicant's readiness for a development grant;

(2) A summary of existing State rules, policies, and procedures for the education of handicapped children from birth through five years of age;

(3) A statement of the overall goals of the project. These goals shall include measurable objectives for service expansion or program improvement in specified program areas which the State plans to achieve during a specified period of time;

(4) Provisions for parent participation in activities to be carried out by the project; and

(5) Current demographic information on handicapped children from birth through five years of age.

(Authority: 20 U.S.C. 1423(b)(2)(B))

§ 309.53 What is an Early Childhood State Implementation Grant?

(a) *Purpose.* An Early Childhood State Implementation Grant is awarded for the purpose of implementing and evaluating the Early Childhood State Plan approved by the State Board of Education, the Commissioner of Education, or other designated official of the appropriate State agency.

(b) *Application contents.* An applicant for a State Implementation Grant must include in its application—

(1) A copy of the approved Early Childhood State Plan;

(2) Current demographic information on handicapped children from birth through five years of age;

(3) A statement of the goals and objectives for implementing the activities to be supported under the project;

(4) A summary of the existing State rules, policies, and procedures for the education of handicapped children from birth through five years of age, including a summary of any significant changes during the development of the Early Childhood State Plan; and

(5) Provisions for parent participation in activities to be carried out under the project.

(Authority: 20 U.S.C. 1423(b)(2)(C))

§ 309.54 What are the other Early Childhood State Plan application requirements?

(a) In addition to the information required in §§ 309.51-309.53, each applicant for a grant under this subpart must include in its application assurances and evidence that—

(1) The State agency receiving the grant will coordinate with other appropriate State agencies (including the State educational agency if the grantee is some other State agency) in carrying out the grant;

(2) If a State agency other than the State educational agency applies for and receives a grant, it will coordinate with and involve the State educational agency in the submission of the application and in carrying out the grant;

(3) The Early Childhood State Plan will address the special education and related services needs of all handicapped children from birth through five years of age, with special emphasis on those children who have not been identified or who are not receiving appropriate services; and

(4) The Early Childhood State plan will be closely coordinated with indentification, location, and evaluation activities under section 612(2)(C) of the Education of the Handicapped Act and with preschool incentive grant activities under section 619 of the Act and 34 CFR Part 301.

(b) The State agency receiving the grant shall cooperate with the Secretary in meeting the Secretary's responsibility under section 623(b)(4)(C) of the Act in providing a description of the status of special education and related services to handicapped children from birth through five years of age in the State for inclusion in the annual report under section 618 of the Act.

(Authority: 20 U.S.C. 1423(b)(3); 1423(b)(4)(C))

§§ 309.55—309.59 [Reserved]

PART 315—AUXILIARY ACTIVITIES

Subpart A—General

Sec.
315.1 What is the Auxiliary Activities program?
315.2 Who is eligible to apply for a grant under this program?
315.3 What regulations apply to this program?
315.4 What definitions apply to this program?
315.5—315.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under this Program?

315.10 What types of activities are considered for support by the Secretary under this part?
315.11 What types of research activities are considered for support by the Secretary under this part?
Sec.
315.12 What types of development or demonstration activities are considered for support by the Secretary under this part?
315.13 What types of training activities are considered for support by the Secretary under this part?
315.14 What types of dissemination activities are considered for support by the Secretary under this part?
315.15—315.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

315.30 How does the Secretary select and announce funding priorities under this program?
315.31 What are the selection criteria used to award a grant?
315.32—315.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee Under This Program?

315.40 What coordination requirement(s) must be met by a grantee?
315.41—315.49 [Reserved]

AUTHORITY: Sec. 624 of the Education of the Handicapped Act (20 U.S.C. 1424), unless otherwise noted.

SOURCE: 49 FR 28021, July 9, 1984, unless otherwise noted.

Subpart A—General

§ 315.1 What is the Auxilliary Activities program?

This program supports research, development or demonstration, training, and dissemination activities which, consistent with the purpose of Part C of the Education of the Handicapped Act, meet the unique educational needs of handicapped children and youth, including those who are severely handicapped.

(Authority: 20 U.S.C. 1424)

§ 315.2 Who is eligible to apply for a grant under this program?

Any public or private, profit or nonprofit, organization or institution may apply for a grant under this program.

(Authority: 20 U.S.C. 1424)

§ 315.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in this Part 315.

(b) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions); and

(4) Part 78 (Education Appeal Board).

(Authority: 20 U.S.C. 1424, 20 U.S.C. 3474(a))

§ 315.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Grantee
Nonprofit
Preschool
Private
Project
Public
Recipient
Secretary
State

(Authority: 20 U.S.C. 1424; 20 U.S.C. 3474(a))

(b) *Definition in 34 CFR Part 300.* The term "parent" as used in this part is defined in 34 CFR 300.10.

(c) *Handicapped children and youth.* The term "handicapped children and youth" as used in this part means those children and youth evaluated as being mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and related services.

(Authority: 20 U.S.C. 1401(1))

(d) *Severely handicapped children and youth.* (1) As used in this part, the term "severely handicapped children and youth" refers to handicapped children and youth who, because of the intensity of their physical, mental, or emotional problems, need highly specialized educational, social, psychological, and medical services in order to maximize their full potential for useful and meaningful participation in society and for self-fulfillment.

(2) The term includes those children and youth who are classified as seriously emotionally disturbed (including children and youth who are schizophrenic), autistic, profoundly and severely mentally retarded, and those who two or more serious handicapping conditions, such as the deaf-blind, mentally retarded-blind, and the cerebral-palsied deaf.

(3) Severely handicapped children and youth—

(i) May experience severe speech, language, and/or perceptual-cognitive deprivations, and evidence abnormal behaviors such as—

(A) Failure to respond to pronounced social stimuli;

(B) Self-multilation;

(C) Self-stimulation;

(D) Manifestation of intense and prolonged temper tantrums; and

(E) The absence of rudimentary forms of verbal control; and

(ii) May also have extremely fragile physiological conditions.

(Authority: 20 U.S.C. 1424)

§§ 315.5—315.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 315.10 What types of activities are considered for support by the Secretary under this part?

The Secretary may provide financial assistance under this part to support the following activities:

(a) Research to identify and meet the full range of special needs of handicapped children and youth, as described in § 315.11.

(b) The development or demonstration of new, or improvements in existing, methods, approaches, or techniques which would contribute to the adjustment and education of handicapped children and youth, as described in § 315.12.

(c) Training of professional and allied personnel engaged or preparing to engage in programs specifically designed for handicapped children and youth, as described in § 315.13.

(d) Dissemination of materials and information about practices found effective in working with handicapped children and youth, as described in § 315.14.

(Authority: 20 U.S.C. 1424)

§ 315.11 What types of research activities are considered for support by the Secretary under this part?

(a) The Secretary may provide financial assistance under this part for the following research activities:

(1) Research to identify and meet the full range of special needs of handicapped children and youth.

(2) Research to identify and meet the instructional or counseling needs of parents, professionals, and others involved in the provision of services to handicapped children and youth, for the purpose of facilitating the delivery and improving the quality of these services.

(b) Each application for assistance under this part must—

(1) Specifically describe and justify the research activities which the applicant proposes to undertake;

(2) Fully describe how the applicant will develop and validate the effectiveness of procedures for applying the project's research findings to the provision of improved direct services to handicapped children and youth.

(Authority: 20 U.S.C. 1424)

§ 315.12 What types of development or demonstration activities are considered for support by the Secretary under this part?

(a) The Secretary may provide financial assistance under this part for one or more of the following development and demonstration activities.

(1) Review, analysis, and evaluation of current educational practices and research findings.

(2) Diagnosis and evaluation of the learning capacities and limitations of handicapped children and youth and the identification of their specific learning needs and problems.

(3) Design and demonstration of innovative procedures for addressing the identified needs of handicapped children and youth in a variety of settings.

(4) Evaluation of the progress and achievement of handicapped children and youth who particiate in project activities.

(b) Each application for assistance under this part must—

(1) Justify the need for the development or demonstration activities which the applicant proposes to undertake, particularly in consideration of related development or demonstration activities in the nation where applicable;

(2) Describe the nature and extent of the impact which the proposed activities are excepted to have on handicapped children and youth who will be served by the project; and

(3) Describe the impact, in terms of replicability, that the activities are expected to have upon children and youth not served by the project.

(Authority: 20 U.S.C. 1424)

§ 315.13 What types of training activities are considered for support by the Secretary under this part?

The Secretary may provide financial assistance under this part to support training activities that meet the following requirements:

(a) *Training.* Any training of professional and allied personnel under this part must be consistent with the purposes of Part C of the Act. Training may include staff meetings, seminars, workshops, demonstrations, and related activities.

(b) *Participants.* Participants in training activities may include present and potential project personnel and other teachers, administrators, child care workers, parents, and teacher aides.

(c) Each application for assistance under this part must—

(1) Justify the need for the training activities that the applicant proposes to undertake; and

(2) Describe the nature and extent of the impact that the proposed activities are expected to have on handicapped children and youth who will ultimately be served by the individuals who receive the training.

(Authority: 20 U.S.C. 1424)

(Approved by the Office of Management and Budget under control number 1820-0028)

§ 315.14 What types of dissemination activities are considered for support by the Secretary under this part?

The Secretary may provide assistance under this part for dissemination activities including distribution of materials and information to educational institutions, parents, the general public, and members of professions engaged in the field of the education of the handicapped.

(Authority: 20 U.S.C. 1424)

§§ 315.15—315.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 315.30 How does the Secretary select and announce funding priorities under this program?

(a) For any fiscal year, the Secretary may give priority to one or more of the activities listed in §§ 315.10-315.14 in conjunction with one of the authorities in Part C.

(b) The Secretary advises the public of these priorities through a notice published in the FEDERAL REGISTER.

(c) The Secretary may establish other priorities through publication of one or more notices in the FEDERAL REGISTER in accordance with 34 CFR 75.105, *Annual priorities.*

(Authority: 20 U.S.C. 1424)

§ 315.31 What are the selection criteria used to award a grant?

The Secretary uses the weighted criteria in this section to evaluate applications for new awards. The maximum score for all the criteria is 100 points.

(a) *Plan of operations.* (40 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the qualifications of key personnel the applicant plans to use in the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of project personnel, the Secretary considers their experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (*See* 34 CFR 75.590, *Evaluation by the grantee.*)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Capability of organization or institution.* (10 points) The Secretary reviews each application for information that shows the capability of the applicant in conducting activities which are particularly relevant to its proposed activities.

(g) *Dissemination plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the dissemination plan for the project.

(2) The Secretary looks for information that shows—

(i) An effective plan that ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(ii) A clear description of the content, intended audiences, and timelines for production of all project documents and other products which the applicant will disseminate.

(h) *Cooperation and coordination with other organizations and institutions.* (10 points)

(1) The Secretary reviews each application for information that ensures that activities funded under this section will be coordinated with—

(i) Similar activities assisted under Part C of the Act; and

(ii) Other organizations or institutions conducting or eligible to conduct activities essential to the effective implementation of the proposed project.

(2) The Secretary looks for information that shows the nature, extent, and timelines for coordination proposed by the applicant.

(Authority: 20 U.S.C. 1424(b); 20 U.S.C. 3474(a))

(Approved by the Office of Management and Budget under control number 1820-0028)

§§ 315.32—315.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee Under This Program?

§ 315.40 What coordination requirement(s) must be met by a grantee?

Each recipient shall coordinate the activities assisted under this part with similar activities assisted under other sections of the Act.

(Authority: 20 U.S.C. 1424)

§§ 315.41—315.49 [Reserved]

PART 318—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED

Subpart A—General

Sec.

318.1 What is the Training Personnel for the Education of the Handicapped program?

318.2 Who is eligible for a grant under the Training Personnel for the Education of the Handicapped program?

318.3 What regulations apply to the Training Personnel for the Education of the Handicapped program?

318.4 What definitions apply to the Training Personnel for the Education of the Handicapped program?

318.5—318.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

318.10 What kinds of training projects may be supported under this part?

318.11 What types of training priorities are considered for support by the Secretary under this part?

318.12 How does the Secretary use priorities?

318.13—318.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

318.30 What are the selection criteria used to award a grant?

318.31—318.39 [Reserved]

Subpart E—What Conditions Must be Met by a Grantee?

318.40 Is student financial assistance authorized?

318.41 What are the student financial assistance criteria?

318.42 What amount of assistance is authorized?

318.43 What financial assistance is authorized for part-time students?

318.44 What is required for a financially assisted student who withdraws or is dismissed?

318.45 What are the special requirements for a parent organization operating a program receiving assistance under this part?

318.46 What types of reports are required of grantees?

318.47—318.49 [Reserved]

AUTHORITY: Secs. 631, 632, 634, Education of the Handicapped Act (20 U.S.C. 1431, 1432, 1434), unless otherwise noted.

SOURCE: 49 FR 28373, July 11, 1984, unless otherwise noted.

Subpart A—General

§ 318.1 What is the Training Personnel for the Education of the Handicapped program?

This program serves to increase the quantity and improve the quality of personnel available to educate handicapped children and youth through the provision of awards to—

(a) Institutions of higher education and other appropriate nonprofit agencies to assist them in training personnel for careers in special education;

(b) Parent organizations (as defined in § 318.2(b)) to meet the unique training and information needs of parents of handicapped children and youth and volunteers who work with parents; and

(c) State educational agencies to assist them in establishing and maintaining programs for the preservice and inservice training of teachers of handicapped children and youth, or supervisors of such teachers.

(Authority: 20 U.S.C. 1431, 1432)

§ 318.2 Who is eligible for a grant under the Training Personnel for the Education of the Handicapped program?

(a) In general, the following agencies are eligible for assistance under this part:

(1) State educational agencies.

(2) Institutions of higher education (including the university-affiliated facilities program under the Rehabilitation Act of 1973 and the satellite network of the developmental disabilities program).

(3) Other appropriate nonprofit agencies or organizations.

(b) For certain priorities under this part, assistance may be limited to a particular type of agency or organization such as a parent organization (see § 318.11(b)(8)). For the purpose of this part, a parent organization is a private nonprofit organization which—

(1) Is governed by a board of directors on which a majority of the mem-

bers are parents of handicapped children and youth and which includes members who are professionals in the field of special education and related services who serve handicapped children and youth; or

(2) In the absence of such a board of directors, has a membership which represents the interests of individuals with handicapping conditions, and which has established a special governing committee on which a majority of the members are parents of handicapped children and youth and which includes members who are professionals in the fields of special education and related services, to operate the parent training and information program for which assistance is sought;

(3) Will, in providing training and information under this part, serve the parents of children and youth with the full range of handicapping conditions; and

(4) Demonstrates the capacity and expertise to conduct effectively the training and information activities authorized by this part.

(c) In order to receive a preservice training grant, an institution or agency must demonstrate that the proposed project will meet State and professionally recognized standards for the training of special education and related service personnel.

(Authority: 20 U.S.C. 1431, 1432)

§ 318.3 What regulations apply to the Training Personnel for the Education of the Handicapped program?

The following regulations apply to assistance under the Training Personnel for the Education of the Handicapped program:

(a) The regulations in this Part 318.

(b) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions); and

(4) Part 78 (Education Appeal Board).

(Authority: 20 U.S.C. 1431, 1432; 20 U.S.C. 3474(a))

§ 318.4 What definitions apply to the Training Personnel for the Education of the Handicapped program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Department
EDGAR
Fiscal year
Grant
Grantee
Nonprofit
Preschool
Private
Project
Public
Secretary
State
State educational agency

(b) *Definition that applies to this part.* The following definition applies to this part:

The term "handicapped youth", as used in this part, is defined in section 602(b) of the Education of the Handicapped Act.

(Authority: 20 U.S.C. 1401(b), 1431, 1432; 20 U.S.C. 3474(a))

§§ 318.5—318.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 318.10 What kinds of training projects may be supported under this part?

The Secretary may provide financial assistance under this part to support—

(a) Projects to train personnel for careers in—

(1) Special education, including speech, language, and hearing impaired services, and adaptive physical education;

(2) The provision of related services to handicapped children and youth in educational settings;

(3) Special education supervision and administration;

(4) Special education research; and

(5) Training of special education personnel and other personnel providing special services for the handicapped;

(b) Special projects to develop and demonstrate new approaches for—

(1) The preservice training purposes set forth in paragraph (a) of this section;

(2) The preservice training of regular educators; and

(3) The inservice training of special education personnel, including classroom aides, related services personnel, and regular education personnel who serve handicapped children and youth;

(c) The provision of training and information to—

(1) Parents of handicapped children and youth; and

(2) Volunteers who work with parents of handicapped children and youth; and

(d) Projects to assist State educational agencies in establishing and maintaining, directly or through grants to institutions of higher education, programs for the preservice and inservice training of teachers of handicapped children and youth, or supervisors of such teachers.

(Authority: 20 U.S.C. 1431, 1432)

§ 318.11 What types of training priorities are considered for support by the Secretary under this part?

(a) Projects supported under this part may provide training to degree, nondegree, certified, and non-certified personnel.

(b) The Secretary may select annually one or more of the following priorities or any combination of these priorities for funding:

(1) *Preparation of special educators.* This priority supports projects designed to provide preservice training of personnel for careers in special education of handicapped children and youth. The priority includes the preparation of special educators of the handicapped, including personnel trained in speech, language, and hearing impairments, and adaptive physical educators.

(2) *Preparation of leadership personnel.* This priority supports doctoral and post-doctoral preservice preparation of professional personnel to conduct training of teacher trainers, researchers, administrators, and other specialists.

(3) *Preparation of related services personnel.* This priority supports the preservice preparation of individuals who provide developmental, corrective, and other supportive services as may be required to assist a handicapped child or youth to benefit from special education. The priority supports the preparation of paraprofessional personnel, career educators, recreation specialists, health services personnel, school psychologists, social service providers, counselors, physical therapists, occupational therapists, volunteers, and other personnel providing special services.

(4) *State education agency programs.* This priority supports State educational agencies in establishing and maintaining, directly or through grants to institutions of higher education, programs for the preservice and inservice training indicated by the Secretary in the application notice, of teachers of handicapped children and youth, or supervisors of such teachers. Projects may deal with unique Statewide training in all or several of the areas of need identified by the State comprehensive system of personnel development under 34 CFR 300.380–300.387, and may include training in management and organizational design which enhances the ability of States to provide special education and related services to handicapped children and youth. Only State educational agencies are eligible to submit applications under this priority.

(5) *Special projects.* This priority supports projects to develop and demonstrate new approaches for the preservice training purposes set forth in § 318.10(a), for the preservice training of regular educators, and for the inservice training of special education personnel, including classroom aides, related services personnel, and regular education personnel who serve handicapped children and youth. Project activities assisted under this priority include development, evaluation, and distribution of imaginative or innovative approaches to personnel preparation, and development of materials to prepare personnel to educate handicapped children and youth.

(6) *Transition of handicapped youth to adult and working life.* This priori-

ty supports the preservice preparation of special education and related service personnel, including secondary school teachers, who will prepare handicapped youth to meet adult roles. Personnel may be prepared to provide either short-term transitional services, or to aid in the placement of handicapped youth in long-term employment, or both. Projects supported under this priority should prepare personnel for employment in programs designed to prepare handicapped youth for community placement and adjustment to the community setting.

(7) *Preparation of personnel to provide special education and related services to newborn and infant handicapped children.* This priority supports the preservice preparation of personnel who will serve newborn and infant handicapped children, or newborn and infant children who are determined to be at high risk of being handicaped, or both. Personnel may be prepared to provide short-term special education and related services as necessary in an intensive care nursery, or long-term special education and related services which extend into a preschool program. Projects supported under this priority prepare personnel for employment in programs characterized by strong interaction of the medical, educational, and related services communities, and by involvement of parents or guardians who are the primary care givers for their children.

(8) *Parent organization projects.* (i) This priority supports grants to parent organizations, as defined in § 318.2(b), for the purpose of providing training and information to parents of handicapped children and youth, and to volunteers who work with parents to enable those individuals to participate more effectively with professionals in meeting the educational needs of handicaped children and youth. These projects must be designed to meet the unique training and information needs of parents of handicapped children and youth, including those who are members of groups that have been traditionally underrepresented, living in the area to be served by the grant.

(ii) In selecting projects under this priority, the Secretary ensures that grants will be—

(A) Distributed geographically to the greatest extent possible throughout all the States; and

(B) Targeted to parents of handicapped children and youth in both urban and rural areas, or on a State or regional basis.

(iii) Parent training and information projects assisted under this priority must assist parents to—

(A) Better understand the nature and needs of the handicapping conditions of their handicapped child or youth;

(B) Provide followup support for their handicapped child's or youth's educational programs;

(C) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(D) Participate in educational decisionmaking processes including the development of their handicapped child's or youth's individualized education program under 34 CFR 300.340-300.349;

(E) Obtain information about the programs, services, and resources available to their handicapped child or youth, and the degree to which the programs, services, and resources are appropriate; and

(F) Understand the provisions for the education of handicapped children and youth as specified under Part B of the Education of the Handicapped Act and 34 CFR Part 300.

(iv) The Secretary reserves at least 10 percent of appropriations under this part for parent organization projects.

(9) *Preparation of personnel to work in rural areas.* This priority supports preservice training of personnel for rural areas. Particular attention must be given to preservice training related to the unique aspects of providing services to special populations in rural areas. Projects supported under this priority must prepare special education personnel to fill a variety of rural specific roles with handicapped students, parents, peers, and administrators. Training curricula must be designed to—

(i) Teach students about local community systems and encourage understanding of interdisciplinary models of service delivery which are consistent with local community values; and

(ii) Train students in alternate ways of adopting teaching techniques for specific rural community characteristics.

(10) *Preparation of personnel for minority handicapped children.* This priority supports the preservice preparation of special education and related service personnel to educate minority or underserved populations, and provides training for members of groups which have been traditionally underrepresented in these fields.

(Authority: 20 U.S.C. 1431, 1432)

§ 318.12 How does the Secretary use priorities?

(a) The Secretary may establish a separate competition for each priority described in § 318.11(b) or combination of priorities selected for support in a given year.

(b) If an application contains activities which address both a priority and a non-priority area, the Secretary considers for support only those activities that address a selected priority.

(Authority: 20 U.S.C. 1431, 1432)

§§ 318.13—318.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 318.30 What are the selection criteria used to award a grant?

The Secretary uses the weighted criteria in this section to evaluate applications for new awards. The maximum score for all the criteria is 100 points.

(a) *Plan of operation.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Evaluation plan.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(Authority: *See* 34 CFR 75.590, *Evaluation by the grantee*)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (c)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory emmployment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows—

(i) The applicant plans to devote adequate resources to the project;

(ii) The facilities that the applicant plans to use are adequate; and

(iii) The equipment and supplies that the appplicant plans to use are adequate.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Extent of need for the project.* (25 points)

(1) The Secretary reviews each application for information that shows the project meets personnel training needs, consistent with the purposes of Part D of the Act.

(2) In conducting this review, the Secretary looks for information that—

(i) Describes the needs addressed by the project;

(ii) Describes how the project relates to—

(A) Identifies personnel shortages in the fields of special education and related services for projects proposing to provide preservice training of personnel for careers in the fields of special education and related services under § 318.10 (a) and (d); and

(B) Personnel training needs for special projects under § 318.10(b), parent and volunteer projects under § 318.10(c), and inservice projects under § 318.10(d); and

(iii) Describes the benefits to be gained by meeting those personnel needs.

(g) *Program content.* (15 points)

(1) The Secretary reviews each application for information that shows—

(i) The extent to which the application includes a description of competencies that each program participant will acquire and how the competencies will be evaluated;

(ii) The extent to which substantive content and organization of the program—

(A) Are appropriate for the attainment of knowledge and competencies that are necessary for the provision of quality educational services to handicapped children and youth; and

(B) Demonstrate an awareness of relevant methods, procedures, techniques, and instructional media or materials that can be used in the preparation of personnel who serve handicapped children and youth;

(iii) The extent to which appropriate practicum facilities are accessible to the applicant and are used for such activities as observation, participation, practice, teaching, laboratory or clinical experience, internship, or other supervised experiences of adequate scope, combination, and length; and

(iv) The extent to which program philosophy, program objectives, and program activities are related to the educational needs of handicapped children and youth.

(Authority: 20 U.S.C. 1431, 1432; 20 U.S.C. 3474(a))

(Approved by the Office of Management and Budget under control number 1820-0028)

§§ 318.31—318.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 318.40 Is student financial assistance authorized?

A grantee may use any portion of a grant awarded under this part to pay direct financial assistance to students, including fellowships or traineeships with stipends and allowances that meet the requirements of this part.

(Authority: 20 U.S.C. 1431, 1432)

§ 318.41 What are the student financial assistance criteria?

Direct financial assistance may be paid to students only if—

(a) The student is qualified for admission to the program of study;

(b) The student maintains acceptable progress in a course of study;

(c) The student demonstrates need for financial assistance as determined by criteria established by the grantee; and

(d) The student is a citizen or a national of the United States, or is legally in the United States for other than a temporary purpose and intends to become a permanent resident.

(Authority: 20 U.S.C. 1431, 1432)

§ 318.42 What amount of assistance is authorized?

Subject to the limitations stated in §§ 318.43 and 318.44, grantees shall disburse financial assistance to students in amounts consistent with established grantee policies relevant to providing financial assistance to part-time and full-time students at various levels of study.

(Authority: 20 U.S.C. 1431, 1432)

§ 318.43 What financial assistance is authorized for part-time students?

(a) Students enrolled for less than a full calendar year or a full-time academic year may receive a stipend. Such short-term students are not eligible for allowances for dependents.

(b) Students who are receiving calendar year or full-time academic year assistance at the time of their short-term study are not eligible for financial assistance under this section.

(Authority: 20 U.S.C. 1431, 1432)

§ 318.44 What is required for a financially assisted student who withdraws or is dismissed?

A grantee shall make financial adjustments when a student withdraws or is dismissed before the end of the program. In those instances where students withdraw or are dismissed from graduate and undergraduate academic year or short-term programs, a grantee may give the remaining funds as a partial award to another student who is enrolled in the program assisted under this part. The Secretary considers the funds made available as a result of a financial adjustment as an overpayment, unless these funds are used as a partial award or are used in ways otherwise consistent with the requirements of this part.

(Authority: 20 U.S.C. 1431, 1432)

§ 318.45 What are the special requirements for a parent organization operating a program receiving assistance under this part?

(a) The board of directors of a parent organization or any special governing committee established under § 318.2(b) shall meet at least once in each calendar quarter to review the parent training and information program activities assisted under this part. Any special governing committee shall advise the governing board directly of its views and recommendations.

(b) Each parent organization operating a program receiving assistance under this part shall consult with appropriate agencies which serve or assist handicapped children and youth and are located in the jurisdictions served by the program.

(c) Whenever a parent organization requests the renewal of a grant awarded under § 318.11(b)(8), the board of directors must submit to the Secretary a written review of the training and information program conducted by that parent organization during the preceding fiscal year. This review must include the views and recommendations of any special governing committee established under § 318.2(b).

(Authority: 20 U.S.C. 1431 (c)(3), (c)(6))

§ 318.46 What types of reports are required of grantees?

Not more than 60 days after the end of any fiscal year, each recipient of a grant during that fiscal year must prepare and submit a report to the Secretary. Each report must be in such form and detail as the Secretary determines to be appropriate, and must include—

(a) The number of individuals trained under the grant, by category of training and level of training; and

(b) The number of individuals trained under the grant receiving degrees and certification, by category and level of training.

(Authority: 20 U.S.C. 1434(a))

§§ 318.47—318.49 [Reserved]

PART 320—RECRUITMENT AND INFORMATION

Subpart A—General

Sec.

320.1 What is the Recruitment and Information program?
320.2 Who is eligible to apply for assistance under this program?
320.3 What regulations apply to this program?
320.4 What definitions apply to this program?
320.5—320.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

320.10 What kinds of activities may be supported under this part?
320.11—320.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

320.30 What are the selection criteria used to award a grant?
320.31 What are the priorities for funding under this program?
320.32—320.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

320.40 What evaluation and coordination requirements must be met by a grantee?
320.41—320.49 [Reserved]

AUTHORITY: Sec. 633 of the Education of the Handicapped Act (20 U.S.C. 1433), unless otherwise noted.

SOURCE: 49 FR 25986, June 25, 1984, unless otherwise noted.

Subpart A—General

§ 320.1 What is the Recruitment and Information program?

The Recruitment and Information program provides financial assistance for—

(a) A national clearinghouse on the education of the handicapped that—

(1) Disseminates information and provides technical assistance to parents, professional, and other interested parties;

(2) Encourages individuals to pursue careers and employment in the various fields relating to the education of handicapped children and youth; and

(3) Provides information on available services and programs in postsecondary education for the handicapped;

(b) A national clearinghouse on postsecondary education for handicapped individuals; and

(c) Projects to carry out, in conjunction with any clearinghouse established under this part, specific recruitment and information activities.

(Authority: 20 U.S.C. 1433)

§ 320.2 Who is eligible to apply for assistance under this program?

Parties eligible to apply for assistance under this part are public agencies or nonprofit private organizations or institutions. In addition, contracts may be made with profit-making organizations under this section only when necessary for materials or media access.

(Authority: 20 U.S.C. 1433)

§ 320.3 What regulations apply to this program?

The following regulations apply to grants awarded under this program:

(a) The regulations in this Part 320.

(b) The Education Department General Administrative Regulations (EDGAR) in Title 34 of the *Code of Federal Regulations* in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1433; 20 U.S.C. 3474(a))

§ 320.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Contract
EDGAR
Grant
Nonprofit
Private
Project
Public
Secretary
State

(Authority: 20 U.S.C. 3474(a))

(b) *Definitions in 34 CFR Part 300.* The term "parent" as used in this part is defined in 34 CFR 300.10.

(Authority: 20 U.S.C. 1433)

§§ 320.5—320.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 320.10 What kinds of activities may be supported under this part?

The Secretary may provide funds under this part to—

(a) Establish and operate a national clearinghouse on the education of the handicapped that will—

(1) Disseminate information and provide technical assistance on a national basis to parents, professionals, and other interested parties concerning, at least—

(i) Programs relating to the education of the handicapped under the Education of the Handicapped Act and under other Federal laws:

(ii)(A) Special educational programs, services, and resources;

(B) Related medical, health, social, and recreational services;

(C) Options for training and experience in daily living skills programs;

(D) The nature of various handicapping conditions and their educational and employment implications;

(E) Legal issues affecting the handicapped; and

(F) Information on available services and programs in postsecondary education for the handicapped; and

(iii) Participation in programs described in paragraphs (a)(1) (i) and (ii) of this section, including referral of individuals to appropriate national, State, and local agencies and organizations for further assistance;

(2) Encourage students and professional personnel to seek and obtain careers and employment in the various fields relating to the education of the handicapped. An applicant could propose, for example, to develop and distribute innovative materials to assist in recruiting personnel for such careers, or publicize existing quality programs in personnel preparation and forms of financial aid which might enable students to pursue such careers, including careers in rural, isolated, or culturally diverse areas; and

(3) Promote the involvement of handicapped individuals, parents, volunteers, professionals, and interested organizations in the provision of information to the general public concerning the handicapped;

(b) Establish and operate a national clearinghouse on postsecondary education for handicapped individuals that will collect and disseminate information on a national basis to handicapped individuals, professionals, and other interested individuals, concerning postsecondary services and programs for the handicapped, including specially designed programs of postsecondary, vocational, technical, and adult education for handicapped individuals; and

(c) Support projects to carry out, in conjunction with any clearinghouse established under this section, any of the activities described in paragraph (a).

(Authority: 20 U.S.C. 1433)

§§ 320.11—320.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 320.30 What are the selection criteria used to award a grant?

The Secretary uses the criteria in this section to evaluate applications for new grants. The maximum score for all the criteria is 100 points. The maximum score for each complete criterion is indicated in parentheses.

(a) *Plan of operation.* [40 points]

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the qualifications of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(20)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590.) *Evaluation by the grantee.*)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Experience and ability.* (10 points)

The Secretary looks for information that shows the applicant's—

(1) National experience relevant to performance of the functions supported by this program;

(2) Ability to conduct its proposed project;

(3) Ability to communicate with the intended consumers of information; and

(4) Ability to maintain the necessary communication with other agencies and organizations.

(g) *Cooperation and coordination with other agencies.* (10 points)

(1) The Secretary reviews each application for information that shows the activities funded under this section will be coordinated with—

(i) Similar activities funded from grants and contracts awarded under this part and under Part C of the Act; and

(ii) Other agencies and organizations conducting or eligible to conduct activities essential to the effective implementation of the proposed project.

(2) The Secretary looks for information that shows the nature and extent of, and timeline for, coordination which the applicant has had and proposes to have to facilitate implementation and continuation of the project activities after termination of Federal funding.

(Authority: 20 U.S.C. 1433)

(Approved by the Office of Management and Budget under control number 1820-0028)

§ 320.31 What are the priorities for funding under this program?

The Secretary may select as annual priorities any of the activities listed in § 320.10 by publishing a notice in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1433)

§§ 320.32—320.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 320.40 What evaluation and coordination requirements must be met by a grantee?

(a) Each grantee under this part shall ensure that any printed materials it produces or disseminates have been evaluated by handicapped individuals, parents of handicapped children and youth, and by appropriate professionals with respect to the quality, currency, and appropriateness of, and the need to develop or disseminate, the materials.

(b) Recipients of awards under § 320.10 (a) and (b) shall coordinate the dissemination of materials and information activities supported under this part.

(Authority: 20 U.S.C. 1433)

§§ 320.41—320.49 [Reserved]

PART 322—TRAINING PROGRAM FOR TEACHERS OF HANDICAPPED CHILDREN IN AREAS WITH A SHORTAGE

Subpart A—General

Sec.

322.1 Purpose of the program.
322.2 Eligible applicants.
322.3 Regulations that apply to this program.
322.4 Definitions that apply to this part.

Subpart B—[Reserved]

Subpart C—How Does a State Educational Agency Apply for a Grant?

322.10 Application requirements.

Subpart D—How Does the Secretary Make a Grant?

322.20 Distribution of grants.
322.21 Criteria for determination of need for teachers and other specialists.

Subpart E—What Conditions Must Be Met by a Grantee or by a Student Who Receives a Fellowship?

322.30 Criteria to assure appropriate training.

Sec.
322.31 Two-year teaching requirement.
322.32 Restrictions on employment.

AUTHORITY: Title V-C of the Higher Education Act of 1965, as amended, (20 U.S.C. 1119b-1119b-5), unless otherwise noted.

SOURCE: 46 FR 4915, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 322.1 Purpose of the program.

(a) This program is intended to increase the numbers of persons qualified to teach handicapped children in areas that have a shortage of those persons.

(b) The program provides grants to States to fund fellowships at institutions of higher education.

(Authority: 20 U.S.C. 1119b)

§ 322.2 Eligible applicants.

State educational agencies are eligible to apply for grants under this part.

(Authority: 20 U.S.C. 1119b)

§ 322.3 Regulations that apply to this program.

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76 (State-administered programs) and 77 (Definitions).

(b) The regulations in this Part 322.

(Authority: 20 U.S.C. 3474)

§ 322.4 Definitions that apply to this part.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Application
EDGAR
Grant
Local educational agency
Secretary
State
State educational agency

(b) *Other definitions.* The following definitions also apply to the regulations in this part:

"Act" means Title V-C of the Higher Education Act of 1965, as amended.

"Special education" has the same meaning as defined in section 602(16) of the Education of the Handicapped Act, as amended. (See 34 CFR 300.14—formerly 45 CFR 121a.14—Definition of "special education".)

(Authority: 20 U.S.C. 3474)

Subpart B—[Reserved]

Subpart C—How Does a State Educational Agency Apply for a Grant?

§ 322.10 Application requirements.

To receive a grant, a State educational agency shall submit an application that meets the requirements of EDGAR Part 76, Subpart C, and Section 542 of the Act.

(Authority: 20 U.S.C. 1119b-1)

Subpart D—How Does the Secretary Make a Grant?

§ 322.20 Distribution of grants.

(a) The Secretary makes a grant to each State that—(1) Has a shortage of teachers or other specialists in special education; and

(2) Meets the requirements under the Act and the regulations in this part.

(b) The Secretary determines the amount of each State's grant by dividing the number of teachers and other specialists needed in that State by the total number needed by all States, and multiplying that percentage by the amount of funds available for grants under this program.

(Authority: 20 U.S.C. 1119b(c))

§ 322.21 Criteria for determination of need for teachers and other specialists.

(a) The Secretary determines a State's need for teachers and other specialists based on information provided by the State.

(b) A State may provide this information—

(1) In its application; or

(2) By reference to the information relating to personnel development in its State plan under Part B of the Education of the Handicapped Act, as amended.

(Authority: 20 U.S.C. 1119b(b)(c))

CROSS REFERENCE: 34 CFR Part 300 (Formerly 45 CFR Part 121a)—Assistance to States for Education of Handicapped Children.

Subpart E—What Conditions Must Be Met by a Grantee or by a Student Who Receives a Fellowship?

§ 322.30 Criteria to assure appropriate training.

(a) A State may not award a fellowship unless the State determines that—

(1) The student receiving the fellowship will attend an institution of higher education that offers a program in special education that meets applicable State standards; and

(2) The specialized training that the student receives will be in the subject areas in which there is the greatest need in the State for teachers of special education.

(b) A student receiving a fellowship under this part shall—

(1) Devote at least one-half of a full-time academic workload to study in the area of special education for which the fellowship is awarded; and

(2) Maintain satisfactory progress, as determined by the institution of higher education that the student attends.

(Authority: 20 U.S.C. 1119b(b) (2) and (3); 1119b-3(a))

§ 322.31 Two-year teaching requirement.

(a)(1) Within the five-year period after a student completes the training for which a fellowship was awarded under this part, the student must teach for a period of not less than two years in—

(i) An elementary or secondary school of a local educational agency of the State that awarded the fellowship;

(ii) A public elementary or secondary school of that State; or

(iii) A public educational program, approved by the local educational agency or the State, which has (or has provided assurances that it will have) a special education program.

(2) The student must obtain State educational agency approval of the school or program in which the student intends to teach. The school or program must be located in an area with a shortage of teachers or other specialists in special education, as measured by—

(i) Lack of special education services for handicapped children in the area;

(ii) Lack of other specialized services for handicapped children in the area; or

(iii) High ratio of students to teachers in the special education programs in the area.

(b) (1) If the student does not meet the conditions of paragraph (a), the State shall require the student to repay the stipend provided to the student and the allowances paid to the institution of higher education.

(2) If the State educational agency determines that the student did not meet the requirements of paragraph (a) for reasons beyond the student's control, the State educational agency shall reduce or eliminate the amount of the student's repayment. The amount of any reduction is at the discretion of the State educational agency.

(Authority: 20 U.S.C. 1119b-1(b))

§ 322.32 Restrictions on employment.

(a) A student may not engage in gainful employment unless the employment is in a federally-assisted program providing services to handicapped children.

(b) (1) If the student engages in any other gainful employment, the State educational agency shall reduce the student's stipend.

(2) The State educational agency may set the amount of reduction of a stipend as appropriate under the particular circumstances.

(Authority: 20 U.S.C. 1119b-3(a))

PART 324—RESEARCH IN EDUCATION OF THE HANDICAPPED PROGRAM

Subpart A—General

Sec.

324.1 What is the Research in Education of the Handicapped Program?
324.2 Who is eligible to apply for an award under this program?
324.3 What regulations apply to this program?

Sec.
324.4 What definitions apply to this program?
324.5—324.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

324.10 What kinds of projects are authorized under this part?
324.11 What kinds of research and model projects are supported under this part?
324.12—324.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

324.30 How does the Secretary select and announce funding priorities under this program?
324.31 What are the selection criteria for evaluating applications for research projects?
324.32 What are the selection criteria for evaluating applications for model projects?
324.33 What are the selection criteria for evaluating research-related activities other than research and model projects?
324.34—324.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Recipient?

324.40 What conditions must be met by a recipient?
324.41—324.49 [Reserved]

AUTHORITY: Secs. 641-644 of the Education of the Handicapped Act, as amended by Pub. L. 98-199, 97 Stat. 1372-1374 (20 U.S.C. 1441-1444), unless otherwise noted.

SOURCE: 50 FR 34639, Aug. 26, 1985, unless otherwise noted.

Subpart A—General

§ 324.1 What is the Research in Education of the Handicapped Program?

The purpose of this program is to provide support for—

(a) Research and related activties to assist special education personnel, related servcies personnel, and other appropriate persons, including parents, in improving the education and related services for handicapped children and youth;

(b) Research, surveys, or demonstrations relating to the education of handicapped children and youth;

(c) Research and related purposes relating to physical education or recreation for handicapped children; and

(d) Research, surveys, or demonstrations relating to physical education or recreation for handicapped children.

(Authority: 20 U.S.C. 1441(a), 1442)

§ 324.2 Who is eligible to apply for an award under this program?

(a) The Secretary may make grants to, or enter into contracts and cooperative agreements with, State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations for the research and related activities authorized under Section 641(a) of the Education of the Handicapped Act.

(b) The Secretary may award grants to States, State or local educational agencies, institutions of higher education, and other public or nonprofit private educational or research agencies and organizations, and may make contracts with States, State and local educational agencies, institutions of higher education, and other public or private educational or research agencies and organizations for research and related purposes authorized under section 642 of the Education of the Handicapped Act, relating to physical education or recreation for handicapped children, and to conduct research, surveys, or demonstrations relating to physical education or recreation for handicapped children.

(Authority: 20 U.S.C. 1441(a), 1442)

[50 FR 34639, Aug. 26, 1985, as amended at 50 FR 43702, Oct. 29, 1985]

§ 324.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in this Part 324.

(b) The Education Department General Administrative Regulations (EDGAR), set out in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that Apply to Department Regulations); and

(4) Part 78 (Education Appeal Board).

(Authority: 20 U.S.C. 1441-1444)

§ 324.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Grantee
Local educational agency
Nonprofit
Private
Project
Project period
Secretary
State educational agency

(Authority: 20 U.S.C. 1441-1444)

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR 300.5, 300.13, and 300.14:

Handicapped children
Related services
Special education

(Authority: 20 U.S.C. 1401(a)(1), (16), (17))

(c) *Other definitions.* In addition to the definitions referred to in paragraphs (a) and (b) of this section, the following definition applies to this part: "Handicapped youth" means any handicapped child who—

(1) Is twelve years of age or older; or

(2) Is enrolled in the seventh or higher grade in school.

(Authority: 20 U.S.C. 1401(b))

§§ 324.5—324.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 324.10 What kinds of projects are authorized under this part?

Research and related activities that may be assisted under this part include, but are not limited to—

(a) The development of new and improved techniques and devices for teaching handicapped children and youth;

(b) The development of curricula which meet the unique educational needs of handicapped children and youth;

(c) The application of new technologies and knowledge for the purpose of improving the instruction of handicapped children and youth;

(d) The development of program models and exemplary practices in areas of special education;

(e) The dissemination of information on research and related activities conducted under this part to interested individuals and organizations;

(f) Research and related activities, surveys, or demonstrations relating to physical education or recreation for handicapped children; and

(g) Student-initiated or field-initiated projects consistent with the purpose of the program, as described in § 324.1.

(Authority: 20 U.S.C. 1441(a), 1442)

§ 324.11 What kinds of research and model projects are supported under this part?

(a) Research projects supported under this part must be designed to generate knowledge about the education of handicapped children and youth and to translate that knowledge into practical techniques and materials.

(b) Model projects supported under this part must develop and implement innovative educational programs that serve handicapped children and youth either directly or indirectly. These projects must be designed to—

(1) Improve significantly an aspect of the education of handicapped children and youth;

(2) Provide information about the comparative effectiveness of the model being demonstrated;

(3) Continue beyond the award period; and

(4) Provide for dissemination and replication of a successful program.

(Authority: 20 U.S.C. 1441, 1442)

§§ 324.12—324.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 324.30 How does the Secretary select and announce funding priorities under this program?

(a) For any fiscal year, the Secretary may give priority to one or more of the types of activities under § 324.10.

(b) Under Section 641(c) of the Education of the Handicapped Act, the Secretary is required to publish proposed research priorities for public comment in the FEDERAL REGISTER every two years, not later than July 1. The Secretary is required to publish final priorities for this program not later than 30 days after the close of the comment period.

(c) The Secretary establishes separate competitions for research and model projects for any activity for which the Secretary provides assistance under this part.

(Authority: 20 U.S.C. 1441(c), 1442)

§ 324.31 What are the selection criteria for evaluating applications for research projects?

The Secretary uses the criteria in this section to evaluate applications for research projects. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel that applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

Cross reference: 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) The Secretary reviews each application to determine the importance of the project in leading to the understanding of, remediation, or compensation for the problem or issue relating to the education of handicapped children and youth being addressed.

(g) *Impact.* (5 points) The Secretary reviews each application to determine the probable impact of the proposed research and development products and the extent to which those products can be expected to have a direct influence on handicapped children and youth or personnel responsible for their education.

(h) *Organizational capability.* (10 points) The Secretary considers—

(1) The applicant's special education experience; and

(2) The ability of the applicant to disseminate the findings of the project to appropriate groups to ensure that they can be used effectively.

(i) *Technical soundness.* (40 points) The Secretary reviews each application to determine the technical soundness of the research or evaluation plan, including—

(1) The design;

(2) The proposed sample;

(3) Instrumentation; and

(4) Data analysis procedures.

(Authority: 20 U.S.C. 1441-1442)

§ 324.32 What are the selection criteria for evaluating applications for model projects?

The Secretary uses the criteria in this section to evaluate applications for model project awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project;

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualification, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews such application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

CROSS-REFERENCE: 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) The Secretary reviews each application to determine if—

(1) The service delivery problem addressed by the proposed project is of concern to others in the Nation, and;

(2) The importance of the project in addressing the problem or issue.

(g) *Innovativeness.* (15 points)

(1) The Secretary reviews each application to determine the innovativeness of the proposed project.

(2) The Secretary looks for a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.

(h) *Organizational capability.* (10 points) The Secretary considers—

(1) The applicant's special education experience; and

(2) The applicant's ability to disseminate findings of the project to appropriate groups to ensure that they can be used effectively.

(i) *Technical soundness.* (25 points)

(1) The Secretary reviews each application to determine the technical soundness of the plan for the development, implementation, and evaluation of the model with respect to such matters as—

(i) The population to be served;

(ii) The model planning process;

(iii) Record keeping systems;

(iv) Coordination with other service providers;

(v) The identification and assessment of students;

(vi) Interventions to be used, including proposed curricula;

(vii) Individualized educational program planning; and

(viii) Parent and family participation.

(Authority: 20 U.S.C. 1441-1442)

§ 324.33 What are the selection criteria for evaluating research-related activities other than research and model projects?

The Secretary uses the criteria in 34 CFR 75.210 (*Selection criteria for a discretionary grant program that does not have regulations*) (to evaluate applications for new awards for research-related activities other than research and model projects.

(Authority: 20 U.S.C. 1441-1442).

§§ 324.34—324.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Recipient?

§ 324.40 What conditions must be met by a recipient?

Not more than 90 days after the completion of a project assisted under this part, each recipient must submit a report to the Secretary that includes—

(a) An abstract of the project;

(b) For a research project, a description of the research problem and the methodological approach used in the research study; or

(c) For a model project—

(1) A description of the model which permits replication, in part or in whole, by appropriate parties to which it is disseminated; and

(2) A description of the evaluation procedures and findings related to the effectiveness of the model;

(d) A summary of the project findings; and

(e) A statement of the conclusions.

(Authority: 20 U.S.C. 1441(d))

(Approved by the Office of Management and Budget under control number 1820-0002)

§§ 324.41—324.49 [Reserved]

PART 326—SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR HANDICAPPED YOUTH PROGRAM

Subpart A—General

Sec.

326.1 What is the Secondary Education and Transitional Services for Handicapped Youth program?
326.2 Who is eligible to apply for an award under this program?
326.3 What regulations apply to this program?
326.4 What definitions apply to this program?
326.5—326.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

326.10 What kind of projects are authorized under this part?
326.11—326.19 [Reserved]

Sec.

Subpart C—How Does One Apply for a Grant?

326.20 What must an applicant include in its application?
326.21—326.29 [Reserved]

Subpart D—How Does the Secretary Make a Grant?

326.30 What priorities are considered for support by the Secretary under this part?
326.31 How does the Secretary establish priorities?
326.32 What are the selection criteria for evaluating applications for research and evaluation projects?
326.33 What are the selection criteria for evaluating applications for model projects?
326.34—326.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

326.40 What is the requirement for participation of handicapped students and their parents?
326.41 What coordination requirement must a grantee meet?
326.42—326.49 [Reserved]

Authority: Sec. 626 of the Education of the Handicapped Act (20 U.S.C. 1425), unless otherwise noted.

Source: 49 FR 28383, July 11, 1984, unless otherwise noted.

Subpart A—General

§ 326.1 What is the Secondary Education and Transitional Services for Handicapped Youth program?

(a)(1) The purpose of this program is to assist handicapped youth in the transition from secondary school to postsecondary environments such as competitive or supported employment.

(2) The Secretary carries out this purpose by providing assistance for projects that—

(i) Strengthen and coordinate education, training, and related services that assist handicapped youth in the transition to competitive or supported employment, postsecondary education, vocational training, continuing education, or adult services; or

(ii) Stimulate the improvement and development of programs for secondary special education.

(b) The purpose of this program is also to ensure that secondary special education and transitional services result in competitive or supported employment for handicapped youth.

(Authority: 20 U.S.C. 1425)

§ 326.2 Who is eligible to apply for an award under this program?

The Secretary may provide assistance under this program by grants to, or contracts with—

(a) Institutions of higher education;

(b) State educational agencies;

(c) Local educational agencies; and

(d) Other public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*)).

(Authority: 20 U.S.C. 1425(a))

§ 326.3 What regulations apply to this program?

The following regulations apply to awards under the Secondary Education and Transitional Services for Handicapped Youth program:

(a) The regulations in this Part 326.

(b) The Education Department General Administrative Regulations (EDGAR) in Title 34 of the Code of Federal regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1425; 20 U.S.C. 3474(a))

§ 326.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Grantee
Local educational agency
Nonprofit
Private
Project
Project period
Public
Secondary school
Secretary
State
State educational agency

(Authority: 20 U.S.C. 1425; 20 U.S.C. 3474(a))

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR 300.5,300.13, and 300.14:

Handicapped children
Related services
Special education

(Authority: 20 U.S.C. 1401(a) (1), (16), (17))

(c) *Other definitions.* In addition to the definitions referred to in paragraphs (a) and (b) of this section, the following definitions apply to this part:

(1) "Handicapped youth" means any handicapped child who—

(i) Is twelve years of age or older; or

(ii) Is enrolled in the seventh or higher grade in school.

(Authority: 20 U.S.C. 1401(b))

(2) "Supported employment" is paid work in a variety of settings, particularly regular work sites, especially designed for handicapped individuals—

(i) For whom competitive employment at or above the minimum wage is not immediately obtainable; and

(ii) Who, because of their disability, need intensive on-going support to perform in a work setting.

(Authority: 20 U.S.C. 1425)

§§ 326.5—326.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 326.10 What kinds of projects are authorized under this part?

(a) This program supports research, development, demonstration, evaluation, and other types of projects for the following purposes:

(1) To improve secondary education programs for handicapped youth.

(2) To coordinate with other activities serving this population.

(3) To provide training and related services to assist handicapped youth in the transitional process to postsecondary education, vocational training, competitive employment, continuing education, or adult services.

(4) To conduct research, innovation, training, or dissemination activities, consistent with the purposes of section 624 of the Act and the requirements in 34 CFR Part 315.

(b) Projects funded under this part must serve handicapped youth and may also include other handicapped individuals who have recently left special education programs.

(Authority: 20 U.S.C. 1425)

§§ 326.11—326.19 [Reserved]

Subpart C—How Does One Apply for a Grant?

§ 326.20 What must an applicant include in its application?

(a) Each applicant must include in its application information demonstrating how the activities it proposes will lead to competitive or supported employment of handicapped individuals.

(b) Each applicant must include in its application information demonstrating how it has met, and will meet, the requirements of § 326.40.

(c) Each applicant for activities described in § 326.30 (a) and (b) that is not an educational agency must include in its application information demonstrating how it has met, and will meet, the requirements of § 326.41.

(Authority: 20 U.S.C. 1425)

(Approved by the Office of Management and Budget under control number 1820-0028)

§§ 326.21—326.29 [Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 326.30 What priorities are considered for support by the Secretary under this part?

The Secretary may select annually one or more of the following priority areas for funding:

(a) *Transition Strategies and Techniques.* This priority supports research projects designed to develop strategies and techniques for transition to competitive or supported employment through improvements in independent living skills, secondary and postsecondary education, vocational preparation, and availability of work opportunities.

(b) *Service Demonstration Models.* This priority supports projects that develop and establish exemplary models for services and programs, including specific vocational training and job placement, that result directly in paid employment in regular work settings for handicapped youth leaving school, or that enhance the effectiveness of secondary and postsecondary services which lead to employment.

(c) *Demographic Studies.* This priority supports demographic studies of the numbers, locations, age levels, types and degrees of disabilities of handicapped youth, and anticipated transition and adult services needed by those youth to obtain competitive or supported employment.

(d) *Service Delivery Research Projects.* This priority supports research projects, including field testing and evaluation of innovative service approaches to service delivery models or components to assist handicapped youth in secondary school and in other services that assist transition to employment. These service delivery approaches can be replicated and disseminated.

(e) *Cooperative Models for Planning and Developing Transitional Services.* This priority supports projects designed to plan and develop cooperative models for activities among State or local educational agencies, developmental disabilities councils, and adult service agencies, including vocational rehabilitation, mental health, mental retardation, public employment, and private employers, which will facilitate effective planning for services to meet the employment needs of handicapped youth as they leave school.

(f) *Procedures for Evaluation of Secondary Education, Vocational Training, and Placement Services.* This priority supports projects that will develop appropriate procedures for evaluating secondary special education, vocational training, placement, and other transitional services that lead to employment for handicapped youth.

(g) *Program Evaluation.* This priority supports projects that will evaluate the effectiveness of the program carried out under this part to assist handicapped youth in the transition from secondary school to postsecondary environments such as competitive or supported employment.

(h) *Research Projects in Secondary Education.* This priority supports research projects which focus on secondary level programs for handicapped youth. These projects will have as their major objective the development and improvement of replicable programs and will focus on the evaluation of the program or the components of the program, such as curricula design, program organization, employer involvement, and instructional methods.

(Authority: 20 U.S.C. 1425)

§ 326.31 How does the Secretary establish priorities?

For any fiscal year, the Secretary may select a priority or combination of priorities from among those listed in § 326.30 by publishing a notice in the FEDERAL REGISTER.

(Authority: 20 U.S.C 1425)

§ 326.32 What are the selection criteria for evaluating applications for research and evaluation projects?

The Secretary uses the criteria in this section to evaluate applications for research and evaluation projects, including projects submitted under § 326.30 (a), (c), (d), (f), (g), and (h). The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(See 34 CFR 75.590, Evaluation by the grantee)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are qualifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points)

(1) The Secretary reviews each application for information demonstrating that the proposed project addresses national concerns in light of the purposes of this part.

(2) The Secretary looks for information that shows—

(i) The significance of the problem or issue to be addressed;

(ii) The importance of the proposed project in increasing the understanding of the problem or issue;

(iii) The experiences of service providers related to the problem or issue; and

(iv) Previous research findings related to the problem or issue.

(g) *Impact.* (10 points)

The Secretary reviews each application for information that shows the probable impact of the proposed project in educating handicapped youth, including—

(1) The contribution that the project findings or products will make to current knowledge or practice; and

(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

(h) *Technical soundness.* (40 points)

The Secretary reviews each application for information demonstrating the technical soundness of the research or evaluation plan, including—

(1) The design (10 points);

(2) The proposed sample (10 points);

(3) Instrumentation (10 points); and

(4) Data analysis procedures (10 points).

(Authority: 20 U.S.C. 1425)

§ 326.33 What are the selection criteria for evaluating applications for model projects?

The Secretary uses the criteria in this section to evaluate applications for model projects, including projects submitted under § 326.30 (b) and (e). The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(See 34 CFR 75.590, Evaluation by the grantee)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points)

The Secretary reviews each application for information that shows—

(1) The service delivery problem addressed by the proposed project is of concern to others in the Nation, and;

(2) The importance of the project in solving the problem.

(g) *Impact.* (10 points)

The Secretary reviews each application for information that shows the probable impact of the proposed model in educating handicapped youth, including—

(1) The contribution that the project findings or products will make to current knowledge or practice; and

(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

(h) *Innovativeness.* (10 points)

(1) The Secretary reviews each application for information that shows the innovativeness of the proposed project.

(2) The Secretary looks for information that shows a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.

(i) *Technical soundness.* (25 points)

The Secretary reviews each application for information demonstrating the technical soundness of the plan for the development, implementation, and evaluation of the model with respect to such matters as—

(1) The population to be served;

(2) The model planning process;

(3) Recordkeeping systems;

(4) Coordination with other service providers;

(5) The identification and assessment of students;

(6) Interventions to be used, including proposed curricula;

(7) Individualized educational program planning; and

(8) Parent and family participation.

(Authority: 20 U.S.C. 1425)

§§ 326.34—326.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 326.40 What is the requirement for participation of handicapped students and their parents?

Each grantee shall, to the extent appropriate, provide for the direct participation of handicapped students and the parents of handicapped students in the planning, development, and implementation of its project.

(Authority: 20 U.S.C. 1425(d))

§ 326.41 What coordination requirements must a grantee meet?

A grantee that is not an educational agency shall coordinate with the State educational agency of each affected State in the planning, development, and implementation of any activities described in § 326.30 (a) or (b).

(Authority: 20 U.S.C. 1425(c))

§§ 326.42—326.49 [Reserved]

PART 327—HANDICAPPED SPECIAL STUDIES PROGRAM

Subpart A—General

Sec.

327.1 What is the Handicapped Special Studies Program?
327.2 Who is eligible to apply for an award under this program?
327.3 What regulations apply to this program?
327.4 What definitions apply to this program?
327.5—327.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

327.10 What kinds of projects are authorized under this part?
327.11—327.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

327.30 How does the Secretary establish priorities for an award?
327.31 What are the selection criteria for evaluating applications for awards?
327.32—327.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

327.40 What are the requirements for conducting projects?
327.41—327.49 [Reserved]

AUTHORITY: Sec. 618 of the Education of the Handicapped Act as amended by Pub. L. 98-199, 97 Stat. 1360-1363 (1983), (20 U.S.C. 1418).

SOURCE: 50 FR 35484, Aug. 30, 1985, unless otherwise noted.

Subpart A—General

§ 327.1 What is the Handicapped Special Studies Program?

The purpose of this program is to support the collection of data, studies, investigations, and evaluations to assess the impact and effectiveness of programs and projects assisted under the Education of the Handicapped Act, and related activities to provide the Congress and others with this information.

(Authority: 20 U.S.C. 1418)

§ 327.2 Who is eligible to apply for an award under this program?

(a) The Secretary may make awards under this program to public or private agencies, institutions, organizations, and other appropriate parties for support of the kinds of projects described in § 327.10(a)-(b), and (d)-(h).

(b) The Secretary may enter into cooperative agreements with State educational agencies to carry out the projects described in § 327.10(c).

(Authority: 20 U.S.C. 1418)

§ 327.3 What regulations apply to this program?

The following regulations apply to grants and cooperative agreements under this program:

(a) The regulations in this Part 327.

(b) The Education Department General Administrative Regulations (EDGAR) in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1418)

§ 327.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Grantee
Local educational agency
Project
Secretary
State educational agency.

(Authority: 20 U.S.C. 1418)

(b) *Definition in 34 CFR Part 300.* The following term used in this part is defined in 34 CFR 300.5: Handicapped children.

(Authority: 20 U.S.C. 1401(a)(1))

§§ 327.5—327.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist under This Program?

§ 327.10 What kinds of projects are authorized under this part?

This program provides support for activities that include projects to—

(a) Collect data, and conduct studies, investigations, and evaluations, to assess progress in the implementation of the Act, the impact of the Act, and the effectiveness of State and local efforts to provide free appropriate public education to all handicapped children and youth;

(b) Obtain data, on at least an annual basis, about programs and projects assisted under the Act and under other Federal laws relating to the education of handicapped children and youth, as required under Section 618(b) of the Act;

(c) Assess the impact and effectiveness of programs assisted under the Act, in accordance with sections 618(d) (1) and (2) of the Act, through cooperative agreements with State educational agencies;

(d) Provide technical assistance to participating State educational agencies in the implementation of the evaluation studies described under paragraph (c) of this section;

(e) Disseminate information from the studies assisted under paragraph (c) of this section to State educational agencies, and, as appropriate, others involved in or concerned with the education of handicapped children and youth;

(f) Conduct evaluation studies to determine the impact of the Act;

(g) Conduct evaluation studies, including—

(1) A longitudinal study of a sample of handicapped studies, encompassing the full range of handicapping conditions, to examine their educational progress while in special education and their status (including their occupational, educational, and independent

living status) after leaving secondary school; or

(2) Obtaining and compiling current information from State and local educational agencies and other service providers regarding State and local expenditures for educational services for handicapped children in order to calculate per pupil expenditures by handicapping condition; or

(h) Assist in the development, publication, and dissemination of the annual report to the Congress required under section 618(f) of the Act.

(Authority: 20 U.S.C. 1418)

§§ 327.11—327.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 327.30 How does the Secretary establish priorities for an award?

Section 618(c) of the Education of the Handicapped Act requires that not later than July 1 of each year, the Secretary submit to the appropriate committee of each House of the Congress and publish in the FEDERAL REGISTER proposed evaluation priorities for the program under this part for review and comment.

(Authority: 20 U.S.C. 1418)

§ 327.31 What are the selection criteria for evaluating applications for awards?

The Secretary uses the criteria in this section to evaluate applications for awards. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation* (10 points).

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons, and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, Such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons, and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points).

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

Cross Reference: 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points).

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points).

(1) The Secretary reviews each application to determine if the proposed project addresses State and national concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the issues to be addressed for both State and national audiences;

(ii) The importance of the proposed project in determining the impact and effectiveness of programs assisted under the Act;

(iii) The experiences of service providers related to the problem or issue; and

(iv) Previous research and evaluation findings related to the issues.

(g) *Usefulness.* (10 points).

The Secretary reviews each application to determine the usefulness of the proposed project findings in improving services to handicapped children and youth including—

(1) The contribution that the project findings or products will make to current knowledge or practice;

(2) The extent to which findings and reports will be useful in improving services for handicapped children and youth; and

(3) The extent to which findings and reports will be useful to both State and national audiences in understanding the impact and effectiveness of programs assisted under the Education of the Handicapped Act.

(h) *Technical soundness.* (40 points).

The Secretary reviews each application to determine the technical soundness of the research or evaluation plan, including, where appropriate—

(1) The design;

(2) The proposed sample;

(3) Instrumentation;

(4) Data analysis procedures; and

(5) Procedures for the development of the project report.

(Authority: 20 U.S.C. 1418)

§§ 327.32—327.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 327.40 What are the requirements for conducting projects?

Each State educational agency receiving an award for a State Educational Agency/Federal Evaluation Studies project under § 327.10(c) shall—

(a) Contribute an amount not less than 40 percent of the total cost of the study, which amount may be paid from a State's allocation of funds for State administration of Part B of the Act; and

(b) Develop the study in consultation with the State advisory panel established under the Act, the local educational agencies, and others involved in or concerned with the education of handicapped children and youth.

(Authority: 20 U.S.C. 1418 (c), (d)(2))

§§ 327.41—327.49 [Reserved]

PART 330—CAPTIONED FILMS LOAN SERVICE FOR THE DEAF PROGRAM

Subpart A—General

Sec.
330.1 Captioned films loan service for the deaf program.
330.2 Who is eligible to apply under the captioned films loan service for the deaf program?
330.3 What regulations apply to the captioned films loan service for the deaf program?

Sec.
330.4 What definitions apply to the captioned films loan service for the deaf program?

Subpart B—[Reserved]

Subpart C—How Does One Apply Under This Program?

330.30 How does one apply for the use of loan service?

Subpart D—[Reserved]

Subpart E—What Conditions Must Be Met by a Borrower?

330.50 What are the limitations on use of the loan service?

AUTHORITY: Secs. 651-652 of Part F of the Education of the Handicapped Act, Pub. L. 91-230, as amended by Pub. L. 93-380, 84 Stat. 186 (20 U.S.C. 1451-1452), unless otherwise noted.

SOURCE: 45 FR 52130, Aug. 5, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, unless otherwise noted.

Subpart A—General

§ 330.1 Captioned films loan service for the deaf program.

The Captioned Films Loan Service for the Deaf Program promotes the general welfare of deaf persons by—

(a) Bringing to deaf persons understanding and appreciation of those films that play an important part in the general and cultural advancement of hearing persons;

(b) Providing enriched educational and cultural experiences through which deaf persons can be brought into better touch with the realities of their environment; and

(c) Providing a wholesome and rewarding experience that deaf persons may share together.

(Authority: 20 U.S.C. 1451)

§ 330.2 Who is eligible to apply under the captioned films loan service for the deaf program?

The following are eligible to apply to borrow captioned films:

(a) Deaf persons.

(b) Parents of deaf persons.

(c) Other persons directly involved in activities promoting the advancement of deaf persons in the United States.

(Authority: 20 U.S.C. 1452(a))

§ 330.3 What regulations apply to the captioned films loan service for the deaf program?

The following regulations apply to the Captioned Films Loan Service for the Deaf Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 330.

(Authority: 20 U.S.C. 1451-1453)

§ 330.4 What definitions apply to the captioned films loan service for the deaf program?

(a) *Definitions in EDGAR.* The following term used in these regulations are defined in 34 CFR Part 77:

(b) *Specific program definitions:*

"*Act*" means the Education of the Handicapped Act (Title VI of Pub. L. 91-230 as amended).

"*Borrower*" means a user of loan service media.

"*Deaf person*" means a person whose hearing is so severely impaired as not to be correctable to a functional level for the ordinary activities of living.

"*Educational media*" means those media used for educational purposes.

"*Films*" means motion pictures and other materials similar in display and function, such as video tapes and video discs.

"*Media*" means films, filmstrips, photographs and slides, transparencies, audio and video tapes, audio and video discs, and similar materials. Printed materials may also be included if in combination with one or more of the preceding.

"*Nonprofit purposes*" means that the exhibition of media may not result in monetary gain or other tangible economic benefit to the borrower.

"*Theatrical films*" means films produced for showing in a commercial setting as entertainment and not those primarily developed for use in a formal program of instruction.

(Authority: 20 U.S.C. 1451, 1452)

Subpart B—[Reserved]

Subpart C—How Does One Apply Under This Program?

§ 330.30 How does one apply for the use of the loan service?

Eligible parties should contact the Division of Educational Services of the Office of Special Education and Rehabilitative Services for information regarding an application for borrowing captioned films.

(Authority: 20 U.S.C. 1452)

Subpart D—[Reserved]

Subpart E—What Conditions Must Be Met by a Borrower?

§ 330.50 What are the limitations on use of the loan service?

(a) A borrower shall use the captioned films for nonprofit purposes only.

(b) (1) A borrower shall ensure that no fee is charged to anyone for using the films.

(2) However, a borrower may collect funds for—

(i) The payment of resonable rent for the use of equipment;

(ii) The payment of reasonable costs for a meeting place for the showing of a film; and

(iii) The payment of reasonable fees to a projectionist.

(c) In accordance with agreements with producers and distributors, a borrower shall show theatrical films to deaf persons only. However, this does not exclude the attendance of teachers of the deaf, interpreters, parents, and occasional guests as long as the audience is composed predominantly of deaf persons.

(Authority: 20 U.S.C. 1452 (a), (b)(1))

PART 331—EDUCATIONAL MEDIA LOAN SERVICE FOR THE HANDICAPPED PROGRAM

Subpart A—General

Sec.
331.1 Educational media loan service for the handicapped program.
331.2 Who is eligible to apply under the educational media loan service for the handicapped program?
331.3 What regulations apply to the educational media loan service for the handicapped program?
331.4 What definitions apply to the educational media loan service for the handicapped program?

Subpart B—[Reserved]

Subpart C—How Does One Apply Under This Program?

331.30 How does one apply for the use of loan services?

Subpart D—[Reserved]

Subpart E—What Conditions Must Be Met by a Borrower?

331.50 What are the limitations on the use of the loan service?

AUTHORITY: Secs. 651-652 of Part F of the Education of the Handicapped Act, Pub. L. 91-230, as amended by Pub. L. 93-380, 84 Stat. 186 (20 U.S.C. 1451-1452), unless otherwise noted.

SOURCE: 45 FR 52131, Aug. 5, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 331.1 Educational media loan service for the handicapped program.

The Educational Media Loan Service for the Handicapped Program makes educational media available in the United States for nonprofit purposes to handicapped persons, parents of handicapped persons, and other persons directly involved in activities for the advancement of handicapped persons.

(Authority: 20 U.S.C. 1452(a))

§ 331.2 Who is eligible to apply under the educational media loan service for the handicapped program?

The following are eligible to apply to borrow educational media:

(a) Handicapped persons.

(b) Parents of handicapped persons.

(c) Other persons directly involved in activities for the advancement of handicapped persons in the United States.

(Authority: 20 U.S.C. 1452(a))

§ 331.3 What regulations apply to the educational media loan service for the handicapped program?

The following regulations apply to the Educational Media Loan Service for the Handicapped Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 331.

(Authority: 20 U.S.C. 1451-1453)

§ 331.4 What definitions apply to the educational media loan service for the handicapped program?

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR Part 77:

(b) *Specific program definitions:*

"Act" means the Education of the Handicapped Act (Title VI of Pub. L. 91-230 as amended).

"Borrower" means a user of loan service media.

"Educational media" means those media used for educational purposes.

"Films" means motion pictures and other materials similar in display and function, such as video tapes and video discs.

"Media" means films, filmstrips, photographs and slides, transparencies, audio and video tapes, audio and video discs, and similar materials. Printed materials may also be included if in combination with one or more of the preceding.

"Nonprofit purposes" means that the exhibition of media may not result in monetary gain or other tangible economic benefit to the borrower.

(Authority: 20 U.S.C. 1451, 1452)

Subpart B—[Reserved]

Subpart C—How Does One Apply Under This Program?

§ 331.30 How does one apply for the use of loan services?

Eligible parties should contact the Division of Educational Services of the Office of Special Education and Rehabilitative Services for information regarding an application for borrowing educational media.

(Authority: 20 U.S.C. 1452(a))

Subpart D—[Reserved]

Subpart E—What Conditions Must Be Met by a Borrower?

§ 331.50 What are the limitations on the use of the loan service?

(a) A borrower shall use the educational media for nonprofit purposes only.

(b) A borrower shall ensure that no fee is charged to anyone for using the educational media.

(Authority: 20 U.S.C. 1452(a))

PART 332—EDUCATIONAL MEDIA RESEARCH, PRODUCTION, DISTRIBUTION, AND TRAINING

Subpart A—General

Sec.

332.1 Educational media research, production, distribution, and training program.
332.2 Who is eligible to apply under the educational media research, production, distribution, and training program?
332.3 What regulations apply to the educational media research, production, distribution, and training program?
332.4 What definitions apply to the educational media research, production, distribution, and training program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

332.10 Projects funded under the educational media research, production, distribution, and training program.

Sec.

Subpart C—[Reserved]

Subpart D—How Are Grants Made?

332.30 How does the Secretary establish priorities annually?
332.31 How does the Secretary evaluate an application?
332.32 What selection criteria does the Secretary use?

Subpart E—What Conditions Must Be Met by a Grantee?

332.40 Final products.

AUTHORITY: Secs. 651-652 of Part F of the Education of the Handicapped Act, Pub. L. 91-230, as amended by Pub. L. 93-380, 84 Stat. 186 (20 U.S.C. 1451-1452), unless otherwise noted.

SOURCE: 45 FR 52132, Aug. 5, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 332.1 Educational media research, production, distribution, and training program.

This program is designed to promote the educational advancement of handicapped persons by providing assistance for—

(a) Conducting research on the use of educational media for handicapped persons;

(b) Producing and distributing educational media for the use of handicapped persons, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of handicapped persons; and

(c) Training persons in the use of educational media for the instruction of handicapped persons.

(Authority: 20 U.S.C. 1451(a)(2))

§ 332.2 Who is eligible to apply under the educational media research, production, distribution, and training program?

Parties eligible for grants under this subpart are profit and nonprofit public and private agencies, organizations, and institutions.

(Authority: 20 U.S.C. 1451, 1452)

§ 332.3 What regulations apply to the educational media research, production, distribution, and training program?

The provisions of 34 CFR Parts 75, 77 and this Part 332 apply to this program.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 332.4 What definitions apply to the educational media research, production, distribution, and training program?

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR Part 77:

Applicant
Application
Award
Secretary
Nonprofit
Public

(b) *Specific program definitions:*

"Act" means the Education of the Handicapped Act (Title VI of Pub. L. 91-230 as amended).

"Distribution" means giving physical access to media and related materials and attendant equipment.

"Educational media" means those media used for educational purposes.

"Films" means motion pictures and other materials similar in display and function, such as video tapes and video discs.

"Media" means films, filmstrips, photographs and slides, transparencies, audio and video tapes, audio and video discs, and similar materials. Printed materials may also be included if in combination with one or more of the preceding.

"Media technology" means the methods and processes through which media are provided and encompasses demonstration of the use of modern communication technology in improving the general welfare of handicapped persons.

"Nonprofit purposes" means that the exhibition of media may not result in monetary gain or other tangible economic benefit to the borrower.

"Production" means creating or changing media materials.

"Training" means activities designed to develop facility in the use of media materials and technology and in dissemination and marketing practices.

(Authority: 20 U.S.C. 1451, 1452)

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 332.10 Projects funded under the educational media research, production, distribution, and training program.

Projects that may be supported include, but are not limited to the following:

(a) Research in the use of educational and training films and other educational media for handicapped persons. This may include research to—

(1) Identify the full range of special needs of handicapped persons related to educational media and media technology;

(2) Determine the need for—

(i) Educational media training;

(ii) Media information systems; and

(iii) Media delivery systems;

(3) Determine the extent to which the needs listed in paragraph (a)(2) of this section are being met; and

(4) Develop or demonstrate new or improved techniques that would contribute to the advancement and education of handicapped persons through the use of educational media or technology or both.

(b) Creation or adaptation of educational media for use by handicapped persons, their parents, their actual or potential employers, and other persons directly involved in activities for the advancement of handicapped persons.

(c) Distribution of educational media. This may include the development of delivery systems.

(d) Dissemination of information about practices found effective in regard to the effective use of educational media and technology.

(e) Training of persons in the use and dissemination of educational media for the advancement of handicapped persons.

(Authority: 20 U.S.C. 1452(b)(5))

Subpart C—[Reserved]

Subpart D—How Are Grants Made?

§ 332.30 How does the Secretary establish priorities annually?

(a) The Secretary may select a priority for funding from among those activities listed in § 332.10 by publishing a notice in the FEDERAL REGISTER.

(b) The Secretary may identify a particular handicapping condition or conditions as a priority for assistance under this program through publication of a notice in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1451, 1452)

§ 332.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 332.32. The extent to which an applicant addresses a priority is considered under the *need* criterion of § 332.32(f).

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1451)

§ 332.32 What selection criteria does the Secretary use?

(a) *Plan of operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally under represented, such as—

(A) Handicapped persons;

(B) Members of racial or ethnic minority groups;

(C) Women; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under represented, such as—

(A) Handicapped persons;

(B) Members of racial or ethnic minority groups;

(C) Women; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (15 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources for the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need.* (20 points)

(1) The Secretary reviews each application for information that shows the need for the project.

(2) The Secretary looks for information that shows—

(i) The need for the proposed activity with respect to the handicapping condition served or to be served by the applicant;

(ii) The potential for using the results in other projects or programs.

(g) *Marketing and dissemination.* (5 points)

(1) The Secretary reviews each application for information that shows adequate provisions for marketing or disseminating results.

(2) The Secretary looks for information that shows—

(i) The provisions for marketing or otherwise disseminating the results of the project; and

(ii) Provisions for making materials and techniques available to the populations for whom the project would be useful.

(Authority: 20 U.S.C. 1451, 1452)

[46 FR 3206, Jan. 14, 1981]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 332.40 Final products.

The Secretary may require any grantee engaged in the actual development of materials to submit up to one original and two copies of those materials.

PART 333—CENTERS FOR EDUCATIONAL MEDIA AND MATERIALS FOR THE HANDICAPPED PROGRAM

Subpart A—General

Sec.
333.1 Centers for educational media and materials for the handicapped program.
333.2 Who is eligible to enter into a contract under the centers for educational media and materials for the handicapped program.
333.3 What regulations apply to contracts for centers for educational media and materials for the handicapped program?
333.4 What definitions apply to centers for educational media and materials for the handicapped program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

333.10 What categories of activities may receive support?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Award a Contract?

333.40 What does the Secretary consider before entering into a contract under this part?

AUTHORITY: Sec. 653 of Part F of the Education of the Handicapped Act, Pub. L. 91-230, as amended by Pub. L. 94-142; 84 Stat. 187 (20 U.S.C. 1453), unless otherwise noted.

SOURCE: 45 FR 52133, Aug. 5, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

§ 333.1 Centers for educational media and materials for the handicapped program.

The Secretary awards contracts to establish and operate centers for educational media and materials for handicapped persons. These centers facilitate the use of new technology in educational programs for handicapped persons.

(Authority: 20 U.S.C. 1453(a))

§ 333.2 Who is eligible to enter into a contract under the centers for educational media and materials for the handicapped program?

Parties eligible to enter into a contract under this program are institutions of higher education, State and local educational agencies, or other nonprofit agencies.

(Authority: 20 U.S.C. 1453(a))

§ 333.3 What regulations apply to contracts for centers for educational media and materials for the handicapped program?

The following regulations apply to contracts under this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75 and 77.

(b) The regulations in this Part 333.

(Authority: 20 U.S.C. 1451-1453)

§ 333.4 What definitions apply to centers for educational media and materials for the handicapped program?

(a) *Definitions in EDGAR.* The following terms used in these regulations are defined in 34 CFR Part 77:

Award
Secretary
Local educational agency
State educational agency
Nonprofit

(b) *Specific program definitions.* "Act" means the Education of the Handicapped Act (Title VI of Pub. L. 91-230 as amended).

"*Educational media*" means those media used for educational purposes.

"*Media technology*" means the methods and processes through which media are provided and encompasses demonstration of the use of modern communication technology in improving the general welfare of handicapped persons.

(Authority: 20 U.S.C. 1451, 1452)

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 333.10 What categories of activities may receive support?

The Secretary may enter into contracts under this part to provide Federal funds to facilitate the use of educational technology through—

(a) The design of instructional materials;

(b) The development of instructional materials;

(c) The adaptation of instructional materials; or

(d) Other activities consistent with the purposes of this part.

(Authority: 20 U.S.C. 1453(a))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Award a Contract?

§ 333.40 What does the Secretary consider before entering into a contract under this part?

In considering proposals to enter into contracts under this part, the Secretary gives preference to institutions and agencies—

(a) That have domonstrated the capabilities necessary for the development and evaluation of educational media for handicapped persons; and

(b) That can serve the educational technology needs of the Model High School for Deaf Persons (established under Pub. L. 89-864).

(Authority: 20 U.S.C. 1453)

PART 338—POSTSECONDARY EDUCATION PROGRAMS FOR HANDICAPPED PERSONS

Subpart A—General

Sec.
338.1 What are the Postsecondary Education Programs for Handicapped Persons?
338.2 Who is eligible to apply for an award under these programs?
338.3 What regulations apply to these programs?
338.4 What definitions apply to these programs?
338.5—338.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under These Programs?

338.10 What kinds of activities may be supported under this part?
338.11—338.19 [Reserved]

Subpart C—How Does an Applicant Apply for a Grant?

338.20 What are the application requirements under this part?
338.21—338.29 [Reserved]

Subpart D—How Does the Secretary Make a Grant?

338.30 What are the priorities considered for support by the Secretary under this part?
338.31 What are the selection criteria used to make awards?
338.32—338.39 [Reserved]

AUTHORITY: Sec. 625 of the Education of the Handicapped Act (20 U.S.C. 1424a), unless otherwise noted.

SOURCE: 49 FR 25991, June 25, 1984, unless otherwise noted.

Subpart A—General

§ 338.1 What are the Postsecondary Education Programs for Handicapped Persons?

The Postsecondary Education Programs for Handicapped Persons provide assistance for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for handicapped individuals.

(Authority: 20 U.S.C. 1424a)

§ 338.2 Who is eligible to apply for an award under these programs?

State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other nonprofit educational agencies are eligible to apply for awards under this part.

(Authority: 20 U.S.C. 1424a)

§ 338.3 What regulations apply to these programs?

The following regulations apply to awards under the Postsecondary Education Programs for Handicapped Persons:

(a) The regulations in this Part 338.

(b) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the *Code of Federal Regulations* in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of the Department of Education Programs and Activities).

(Authority: 20 U.S.C. 1424a; 20 U.S.C. 3474(a))

§ 338.4 What definitions apply to these programs?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Nonprofit
Project
Secretary
State educational agency.

(Authority: 20 U.S.C. 3474(a))

(b) *Definitions in 34 CFR Part 300.* The following term used in this part is defined in 34 CFR 300.5(b)(9):

Specific learning disability

(Authority: 20 U.S.C. 1401(a)(15))

(c) *Other definitions.* "Handicapped individuals" means individuals who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired individuals, or individuals with specific learning disabilities who by reason thereof require special education and related services.

(Authority: 20 U.S.C. 1424a(b))

§§ 338.5—338.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under These Programs?

§ 338.10 What kinds of activities may be supported under this part?

(a) The Secretary may support projects and activities under this part including but not limited to—

(1) The operation of centers for deaf individuals, including models of comprehensive supportive services to those individuals;

(2) Model projects of supportive services to individuals with handicapping conditions other than deafness that focus on—

(i) Specially adapted or designed educational programs that coordinate, facilitate, and encourage education of handicapped individuals with their nonhandicapped peers;

(ii) Expansion of the educational resources and services available to handicapped individuals in postsecondary programs;

(iii) Establishment of outreach activities to provide technical assistance and program information concerning access and support services for handicapped individuals; or

(iv) Development and dissemination of strategies and materials for the inservice training of faculty and administrative personnel involved in the integration of handicapped individuals in postsecondary institutions in order to improve their understanding of, and attitudes toward, those individuals;

(3) Evaluation of the effectiveness of programs carried out under this part to increase access to postsecondary education for handicapped individuals;

(4) Establishment of projects to stimulate and develop model statewide, regional, and national programs to improve access for handicapped individuals including the fostering of cooperative and consortia arrangements; and

(5) Conducting research, innovation, training, or dissemination activities, consistent with the purposes of Section 624 of the Act and the requirements in 34 CFR Part 315.

(b) The following is an illustrative list of the types of supportive services which may be provided (in whole or in part) in model projects supported under this part:

(1) Interpreters.

(2) Tutors.

(3) Notetakers and readers.

(4) Wheelchair attendants.

(5) Guidance counselors.

(6) Speech and auditory training.

(7) Job placement and follow-up.

(8) Preparatory and orientation services.

(9) Supplementary learning experiences.

(10) Instructional media adaptations.

(11) Inservice training for teachers and other educational staff relating to the handicapped participants in the program.

(12) Administrative expenses, including employment of a director, administrator, or coordinator of the program.

(13) Planning and evaluation activities.

(c) Recipients may not use funds provided under this part for the payment of tuition or subsistence allowances.

(Authority: 20 U.S.C. 1424a)

§§ 338.11—338.19 [Reserved]

Subpart C—How Does an Applicant Apply for a Grant?

§ 338.20 What are the application requirements under this part?

Applications for funds under this part must contain—

(a) A description of the handicapping condition(s) of the persons to be served; and

(b) The estimated number of handicapped individuals to be served annually in the program and specification of the resources and services needed to enable them to benefit from an educational program.

(Authority: 20 U.S.C. 1424, 1424a)

(Approved by the Office of Management and Budget under control number 1820-0028)

§§ 338.21—338.29 [Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 338.30 What are the priorities considered for support by the Secretary under this part?

(a) For each fiscal year, the Secretary gives priority consideration to four regional centers for deaf individuals.

(b) For any fiscal year, the Secretary may select priorities from among those activities listed in § 338.10(a) (2) through (5).

(c) The Secretary may identify one or more handicapping conditions as a priority for assistance under this part by publishing a notice in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1424a(a)(2))

§ 338.31 What are the selection criteria used to make awards?

The Secretary uses the weighted criteria in this section to evaluate applications for new awards. The maximum score for all the criteria is 100 points.

(a) *Plan of operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers experience and training in fields related to the objectives of the project as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(See 34 CFR 75.590, Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Continuation of program.* (5 points)

(1) The Secretary reviews each application for information that shows that the activities to be supported are likely to be continued after Federal funding ends.

(2) The Secretary looks for information that shows the likelihood that the services provided under the proposed program will be continued by the applicant following the expiration of Federal funding, as measured by evidence of financial and other commitment of the applicant to the program.

(g) *Importance.* (10 points)

(1) The Secretary reviews each application for information demonstrating that the proposed project is nationally important in light of the purposes of this part.

(2) The Secretary looks for information that shows—

(i) The significance of the problem or issue to be addressed;

(ii) The importance of the proposed project in increasing the understanding of the problem or issue; and in remediating or compensating for it;

(iii) The experiences of service providers related to the problem or issue; and

(iv) Previous research findings related to the problem or issue.

(h) *Impact.* (15 points)

The Secretary reviews each application for information that shows the probable impact of the proposed research or demonstration activities in improving postsecondary education for handicapped individuals, including—

(1) The contribution that the research or demonstration findings or

products will make to current knowledge or practice; and

(2) The extent to which findings and products will be disseminated to, and used for the benefit of, appropriate target groups.

(Authority: 20 U.S.C. 1424a)

§§ 338.32—338.39 [Reserved]

PART 350—HANDICAPPED RESEARCH: GENERAL PROVISIONS

Subpart A—General

Sec.
350.1 Handicapped research.
350.2 Who is eligible for assistance under these programs?
350.3 What regulations apply to these programs?
350.4 What definitions apply to these programs?

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

350.20 What are the application procedures for these programs?

Subpart D—How Does the Secretary Make a Grant?

350.30 To whom does the Secretary refer an application?
350.31 What is the purpose of peer review?
350.32 What is the composition of a peer review panel?
350.33 How does the Secretary evaluate an application?
350.34 What selection criteria does the Secretary use in reviewing applications under Parts 351, 352, 353, 354, 355, and 357?

Subpart E—What Conditions Apply to a Grantee?

350.40 What are the matching requirements?

AUTHORITY: Title II of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended by Pub. L. 95-602 (29 U.S.C. 760-762; 92 Stat. 2962-2966).

SOURCE: 46 FR 45305, Sept. 10, 1981, unless otherwise noted.

Subpart A—General

§ 350.1 Handicapped research.

(a) The purposes of activities funded by the Institute are to—

(1) Support the conduct of research and demonstration projects, centers, and related activities that address rehabilitation problems in areas ranging from vocational rehabilitation to independent living, including programs of rehabilitation for handicapped children and handicapped persons aged sixty or older and programs that train persons who provide rehabilitation services or conduct research;

(2) Facilitate the distribution of information concerning developments in rehabilitation procedures, methods, and devices;

(3) Improve the distribution of technological devices and equipment for handicapped individuals and other handicapped persons; and

(4) Increase the scientific and technological information presently available in the field of rehabilitation through the support of applied research and basic research where related to rehabilitation techniques or services;

(b) The Secretary awards financial assistance through nine types of programs:

(1) Research and demonstration projects (34 CFR Part 351).

(2) Research grants for establishment and operation of rehabilitation research and training centers (34 CFR Part 352).

(3) Research grants for establishment and operation of rehabilitation engineering centers (34 CFR Part 353).

(4) Research grants for establishment and operation of model training centers (34 CFR Part 354).

(5) Knowledge dissemination and research utilization projects (34 CFR Part 355).

(6) Research fellowships (34 CFR Part 356).

(7) Field-initiated research projects (34 CFR Part 357).

(8) Innovation Grants projects (34 CFR Part 358).

(9) Special Projects and Demonstrations for Spinal Cord Injuries (34 CFR Part 359).

(Authority: Secs. 200 and 204; 29 U.S.C. 760 and 762)

[46 FR 45305, Sept. 10, 1981, as amended at 50 FR 16673, Apr. 26, 1985]

§ 350.2 Who is eligible for assistance under these programs?

The following agencies and organizations are eligible for grants or contracts as appropriate under these programs:

(a) State and public agencies or organizations;

(b) Private agencies or organizations; and

(c) Institutions of higher education.

(Authority: Sec. 204; (29 U.S.C. 762))

§ 350.3 What regulations apply to these programs?

The following regulations apply to grants under the Handicapped Research Programs—

(a) The Education Department General Administrative Regulations (EDGAR), established in title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs), except as noted in 34 CFR 352.33 and 358.3;

(3) Part 77 (Definitions that Apply to Department Programs); and

(4) Part 78 (Education Appeal Board);

(b) The regulations in this Part, 34 CFR Part 350;

(c) The regulations in 34 CFR Parts 351, 352, 353, 354, 355, 357, 358, or 359, as appropriate; and

(d) The regulations in 45 CFR Part 46 (Protection of Human Subjects).

(Authority: Secs. 202, 204; (29 U.S.C. 761a, 762))

[46 FR 45305, Sept. 10, 1981, as amended at 50 FR 16673, Apr. 26, 1985]

§ 350.4 What definitions apply to these programs?

(a) The following definitions in 34 CFR Part 77 apply to the programs under Handicapped Research—

Applicant.
Application.
Award.
Budget Period.
Department.
EDGAR.
Grant Period.
Nonprofit.
Nonpublic.
Preschool.
Private.
Project.
Project Period.
Public.
Secretary.
State.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

(b) The following definitions also apply to programs under Handicapped Research—

"Act" means the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

"Demonstration" means the application of results derived from previous research, testing, or practice for purposes of establishing the reliability, indicating the validity, or determining the cost effectiveness of new rehabilitation procedures.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

"Development" means the systematic use of knowledge and understanding gained from research, directed toward creating useful materials, devices, systems, or methods, including design and development of prototypes and processes.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

"Director" means Director of the National Institute of Handicapped Research.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

"Fellowship" means a financial award to obtain the assistance of highly qualified research fellows from the United States and foreign countries. It is not a grant.

(Authority: Sec. 202(d); (29 U.S.C. 761a(d)))

"Handicapped individual" means any individual who (1) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment; and (2) can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services.

(Authority: Sec. 7(7)a; (29 U.S.C. 706(7)(A)))

"Institute" means the National Institute of Handicapped Research.

(Authority: Sec. 202(a); (29 U.S.C. 761a(a)))

"Research" means intensive systematic study directed toward new or fuller scientific knowledge or understanding of the subject or problem studied. Research is classified on a continuum from basic to applied.

(1) *"Basic research"* is research in which the investigator is concerned primarily with gaining new knowledge or understanding of a subject without reference to any immediate application or utility.

(2) *"Applied research"* is research in which the investigator is primarily interested in developing new knowledge, information or understanding which can be applied to a predetermined rehabilitation problem or need. Applied research builds on selected findings from basic research.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

"Research utilization" means activities seeking to link research findings to practical applications in planning, policy-making, program administration, and service practice in the delivery of services to handicapped persons.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

"State rehabilitation agency" means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the State agency with respect to that part of the plan relating to the vocational rehabilitation of blind individuals.

(Authority: Sec. 101(a)(1)(A); (29 U.S.C. 721(a)(1)(A)))

"Target population" means the group of individuals, organizations, or other entities expected to be affected by the results of specific research. More than one target group may be involved since research results may affect those who receive services, provide services, or administer services.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

"Training" means a planned and systematic sequence of instruction under competent supervision which is designed to impart predetermined skills and knowledge.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

[46 FR 45305, Sept. 10, 1981, as amended at 49 FR 9325, Mar. 12, 1984]

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

§ 350.20 What are the application procedures for these programs?

An applicant for assistance under 34 CFR Parts 351, 352, 353, 354, 355, 357, 358, or 359 shall submit a copy of its application to the State rehabilitation agency for comment in accordance with the procedures in EDGAR, 34 CFR 75.155–75.159.

(Authority: Secs. 204(c) and 306(i); 29 U.S.C. 762(c) and 766(a))

[50 FR 16673, Apr. 26, 1985]

Subpart D—How Does the Secretary Make a Grant?

§ 350.30 To whom does the Secretary refer an application?

The Secretary refers each application for a grant under the Handicapped Research Programs to a peer review panel established by the Secretary. Peer review panels review applications for the Secretary on the basis of selection criteria described in 34 CFR 350.34, 358.32 or 359.31, as appropriate.

(Authority: Sec. 202(e); 29 U.S.C. 761a(e))

[50 FR 16673, Apr. 26, 1985]

§ 350.31 What is the purpose of peer review?

The purpose of peer review is to insure that those activities supported by the Institute are of the highest scientific, administrative, and technical quality and that the results may be widely applied to appropriate target populations and rehabilitation problems.

(Authority: Sec. 202(e); (29 U.S.C. 761a(e)))

§ 350.32 What is the composition of a peer review panel?

(a) To the maximum extent possible, the Secretary selects as members of a peer review panel non-Federal scientists and other experts in the field of rehabilitation qualified by training and experience of a particular scientific, administrative, or technical nature to give expert advice on the merit of grant applications.

(b) In selecting an individual for membership on a peer review panel, the Secretary takes into account, among other factors, the following:

(1) The level of formal scientific or technical education completed by the individual;

(2) The extent to which the individual has engaged in scientific, technical, or administrative activities appropriate to the category of applications that the panel will consider, the role of the individual in those activities, and the quality of those activities; and

(3) The recognition received by the individual as reflected by awards and other honors from scientific and professional agencies and organizations outside the Department.

(Authority: Sec. 202(e); (29 U.S.C. 761a(e)))

§ 350.33 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application under 34 CFR Parts 351, 352, 353, 354, 355, or 357 on the basis of the selection criteria in § 350.34.

(b) Each criterion applies to all types of NIHR-supported Centers and projects; the elements within each criterion also apply to all types of activities within such Centers and projects unless the regulations specifically state that their application is limited to certain types of activities.

(c) The Secretary awards up to 5 possible points for each criterion to applications under 34 CFR Parts 351, 352, 353, 354, 355, or 357. These points are awarded as follows based on how well the applicant addresses each criterion: Outstanding (5); superior (4); satisfactory (3); marginal (2); or poor (1).

(d) The Secretary computes a final score by multiplying the points awarded on each criterion by the weight assigned each criterion as indicated in parentheses after the descriptive title of the criterion.

(e) The maximum possible score for applications under 34 CFR Part 351, 352, 353, 354, 355, or 357 is 100 points.

(Authority: Sec. 202(e); (29 U.S.C. 761a(e)))

[49 FR 9325, Mar. 12, 1984]

§ 350.34 What selection criteria does the Secretary use in reviewing applications under Parts 351, 352, 353, 354, 355, and 357?

(a) *Potential Impact of Outcomes: Importance of Program* (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The proposed activity relates to the announced priority (does not apply to applications under 34 CFR Part 357);

(2) The research is likely to produce new and useful information (research activities only);

(3) The need and target population are adequately defined;

(4) The outcomes are likely to benefit the defined target population;

(5) The training needs are clearly defined (training activities only);

(6) The training methods and developed subject matter are likely to meet the defined need (training activities only); and

(7) The need for information exists (utilization activities only).

(b) *Potential Impact of Outcomes: Dissemination/Utilization* (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The research results are likely to become available to others working in the field (research activities only);

(2) The means to disseminate and promote utilization by others are defined;

(3) The training methods and content are to be packaged for dissemination and use by others (training activities only); and

(4) The utilization approach is likely to address the defined need (utilization activities only).

(c) *Probability of Achieving Proposed Outcomes; Program/Project Design* (Weight 5.0). The Secretary reviews each application to determine to what degree—

(1) The objectives of the project(s) are clearly stated;

(2) The hypothesis is sound and based on evidence (research activities only);

(3) The project design/methodology is likely to achieve the objectives;

(4) The measurement methodology and analysis is sound (research and development/demonstration activities only);

(5) The conceptual model (if used) is sound (development/demonstration activities only);

(6) The sample populations are correct and significant (research and development/demonstration activities only);

(7) The human subjects are sufficiently protected (research and development/demonstration activities only);

(8) The device(s) or model system is to be developed in an appropriate environment;

(9) The training content is comprehensive and at an appropriate level (training activities only);

(10) The training methods are likely to be effective (training activities only);

(11) The new materials (if developed) are likely to be of high quality and uniqueness (training activities only);

(12) The target populations are linked to the project (utilization activities only); and

(13) The format of the dissemination medium is the best to achieve the desired result (utilization activities only).

(d) *Probability of Achieving Proposed Outcomes: Key Personnel* (Weight 4.0). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training and/or experience and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature and/or methods;

(3) All required disciplines are effectively covered;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(e) *Probability of Achieving Proposed Outcomes: Evaluation Plan* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

(f) *Program/Project Management: Plan of Operation* (Weight 2.0). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that insures proper and efficient administration of the project(s);

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(g) *Program/Project Management: Adequacy of Resources* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative support and adquate facilities is evident.

(h) *Program/Project Management: Budget and Cost Effectiveness* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The budget for the project(s) is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project(s); and

(3) The budget for subcontracts (if required) is detailed and appropriate.

(Authority: Secs. 202(e) and 202(i)(1); (29 U.S.C. 761a(e) and 761a(i)(1)))

[49 FR 9325, Mar. 12, 1984, as amended at 50 FR 16674, Apr. 26, 1985]

Subpart E—What Conditions Apply to a Grantee?

§ 350.40 What are the matching requirements?

(a) The Secretary may make grants to pay for part of the costs of research and demonstration projects which bear directly on the development of procedures, methods, and devices to assist in the provision of vocational and other rehabilitation services. Each grantee must participate in the costs of such projects. The specific amount of cost sharing to be borne by each grantee will be negotiated at the time of the award and is not a factor to be considered in the selection process.

(b)(1) The Secretary may make grants to pay for part or all of the costs of the following activities:

(i) Establishment and support of Rehabilitation Research and Training Centers, Rehabilitation Engineering Centers, and Model Training Centers.

(ii) Research and other special projects and demonstrations concerned with spinal cord injury.

(iii) Research projects concerned with end-stage renal disease, telecommunications, rehabilitation of handicapped children and handicapped individuals who are aged sixty or older, attracting and retaining rehabilitation professionals in rural areas, producing and distributing captioned video cassettes for deaf individuals, and innovative methods of providing services for handicapped children and their parents.

(iv) Joint projects with other Federal agencies and private industry.

(v) Research to test new concepts and innovative ideas.

(vi) International programs of research, demonstration, training, exchange of experts, and technical assistance.

(2) The Secretary determines at the time of the award whether the grantee must pay a portion of the project or center costs.

(Authority: Sec. 204; 29 U.S.C. 762)

[46 FR 45305, Sept. 10, 1981, as amended at 50 FR FR 16674, Apr. 26, 1985]

PART 351—HANDICAPPED RESEARCH: RESEARCH AND DEMONSTRATION PROJECTS

Subpart A—General

Sec.

351.1 What is the research and demonstration projects program?

351.2 Who is eligible for assistance under this program?

351.3 What regulations apply to this program?

351.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

351.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

351.30 How is peer review conducted under this program?

351.31 What selection criteria are used under this program?

351.32 What are the priorities for funding under this program?

AUTHORITY: Title II of the Rehabilitation Act of 1973 (Pub. L. 93-112) as amended by Pub. L. 95-602 (29 U.S.C. 760-762; 92 Stat. 2962-2966).

SOURCE: 46 FR 45308, Sept. 10, 1981, unless otherwise noted.

Subpart A—General

§ 351.1 What is the research and demonstration projects program?

This program is designed—

(a) To assist in the provision of vocational and other rehabilitation services to handicapped individuals, especially the most severely handicapped, through planning and conducting of research and demonstration projects, and specialized research activities;

(b) To cooperate with and assist in developing and sharing information found useful in other nations in the rehabilitation of handicapped individuals; and

(c) To assist in development of solutions to problems encountered by handicapped individuals in their daily activities, especially problems related to employment.

(Authority: Secs. 202(g)(1); 204; (29 U.S.C. 761a(g)(1), 762))

§ 351.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible to apply under this program are described in 34 CFR 350.2.

(Authority: Sec. 204; (29 U.S.C. 762))

§ 351.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Authority: Secs. 202 and 204; (29 U.S.C. 761a, 762))

§ 351.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 351.10 What types of projects are authorized under this program?

The Research and Demonstration Projects Program provides financial assistance for the following types of projects—

(a) Research and demonstration projects as follows—

Scientific, technical, methodological, and other investigations into the nature of disability, methods of analyzing it, and restorative techniques, including basic research where related to rehabilitation techniques or services; studies and analyses of medical, industrial, vocational, social, psychiatric, psychological, economic and other factors affecting rehabilitation of handicapped individuals; research concerned with the special problems of homebound and institutionalized individuals; other research related to problems encountered by handicapped individuals in their daily activities, especially problems related to employment; and demographic studies of handicapped individuals.

(b) Specialized research activities as follows—

(1) Spinal cord injury research and demonstrations;

(2) End-stage renal disease research and demonstrations;

(3) International research, demonstrations, training, and exchange of experts and technical assistance except when related to technology, engineering, research utilization, or research dissemination;

(4) Joint projects with other Federal agencies and private industry except when related to technology or engineering;

(5) Research related to handicapped children and handicapped individuals aged 60 years and older;

(6) Projects to develop and demonstrate methods to attract and retain professionals to serve in rural areas in the rehabilitation of handicapped individuals; and

(7) Research and demonstration projects related to the provision of services to handicapped preschool children.

(Authority: Secs. 204(a), 204(b) (3)-(5), 204(b) (7)-(9), 204(b)(11), 202(b)(8); 29 U.S.C. 762(a), 762(b) (3)-(5), 762(b) (7)-(9), 762(b)(11), 761a(b)(8))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 351.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30-350.32.

(Authority: Sec. 202(e); (29 U.S.C. 761a(e))

§ 351.31 What selection criteria are used under this program?

The selection criteria used under this program are the criteria described in § 350.34.

(Authority: Secs. 202(e) and 202(i)(1); (29 U.S.C. 761a(e) and 761a(i)(1)))

[49 FR 9326, Mar. 12, 1984]

§ 351.32 What are the priorities for funding under this program?

(a) The Secretary may from time to time reserve funds to support some or all of the types of projects listed in § 351.10.

(b) The Secretary advises the public of these priorities through an Application Notice published in the FEDERAL REGISTER.

(Authority: Secs. 202(g), 204; (29 U.S.C. 761a(g), 762))

PART 352—HANDICAPPED RESEARCH: REHABILITATION RESEARCH AND TRAINING CENTERS

Subpart A—General

Sec.
352.1 What is the rehabilitation research and training centers program?
352.2 Who is eligible for assistance under this program?
352.3 What regulations apply to this program?
352.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Assist Under This Program?

352.10 What types of centers are authorized under this program?

Sec.

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

352.30 How is peer review conducted under this program?
352.31 What selection criteria are used under this program?
352.32 What are the priorities for funding under this program?
352.33 May the Secretary renew a Research and Training Center grant without competition?

AUTHORITY: Title II of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended by Pub. L. 95-602 (29 U.S.C. 760-762; 92 Stat. 2962-2966).

SOURCE: 46 FR 45309, Sept. 10, 1981, unless otherwise noted.

Subpart A—General

§ 352.1 What is the rehabilitation research and training centers program?

This program is designed to support the establishment and operation of Rehabilitation Research and Training Centers for the purpose of—

(a) Providing training (including graduate training) to research and other rehabilitation personnel and to assist individuals to more effectively provide rehabilitation services; and

(b) Conducting coordinated and advanced programs of rehabilitation research.

(Authority: Sec. 204(b)(1); (29 U.S.C. 762(b)(1)))

§ 352.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible to apply under this program are described in 34 CFR 350.2.

(Authority: Sec. 204; (29 U.S.C. 762))

§ 352.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Authority: Secs. 202 and 204; (29 U.S.C. 761a, 762))

§ 352.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

Subpart B—What Kinds of Activities Does the Department Assist Under This Program?

§ 352.10 What types of centers are authorized under this program?

(a) Rehabilitation research and training centers must be operated in collaboration with institutions of higher education and must be associated with a rehabilitation service setting which fosters a close working relationship between researchers service delivery personnel, and service recipients. Each center must conduct a program of research and training activities.

(b) The research to be conducted at each center shall be determined on the basis of the particular needs of handicapped individuals in the geographic area served by the center. It may include basic research, where related to identifiable rehabilitation techniques or services, and applied rehabilitation research; research regarding the medical, psychological, and social aspects of rehabilitation; and research related to vocational rehabilitation, independent living, and the rehabilitation of handicapped children and handicapped individuals aged sixty or older. Each center is encouraged to develop practical applications for all of its research findings.

(c) The purpose of training programs at a center is to disseminate and encourage the utilization of new rehabilitation knowledge, findings and techniques resulting from its research activities. These goals may be accomplished by introducing rehabilitation education into related University undergraduate and graduate curricula and by providing short-term, in-service and continuing education training programs to improve the skills of professionals, paraprofessionals, consumers, parents, and other personnel involved in rehabilitation. Grantees may also use grant funds for faculty support for teaching of rehabilitation related courses of study for credit and other courses offered by the institutions of higher education affiliated with the Center. Each grantee that uses grant funds for this purpose shall give priority to training of students preparing to be rehabilitation personnel.

(d) A center may use part of its grant funds to provide to handicapped individuals services that are connected with its research and training activities.

(Authority: Sec. 204(b)(1); (29 U.S.C. 762(b)(1)))

[46 FR 45309, Sept. 10, 1981, as amended at 50 FR 16674, Apr. 26, 1985]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 352.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30–350.32.

(Authority: Sec. 202(e); (29 U.S.C. 761a(e)))

§ 352.31 What selection criteria are used under this program?

The selection criteria used under this program are the criteria described in § 350.34

(Authority: Secs. 202(e) and 202(i)(1); (29 U.S.C. 761a(e) and 761a(i)(1)))

[49 FR 9326, Mar. 12, 1984]

§ 352.32 What are the priorities for funding under this program?

(a) The Secretary may from time to time reserve funds to support some or all of the types of centers listed in 34 CFR 352.10.

(b) The Secretary advises the public of these priorities through an Application Notice in the Federal Register.

(Authority: Secs. 202(g) and 204; (29 U.S.C. 761a(g) and 762))

§ 352.33 May the Secretary renew a Research and Training Center grant without competition?

(a) Notwithstanding the provisions of EDGAR, 34 CFR § 75.253(d), the

Secretary may renew a Rehabilitation Research and Training Center (RTC) grant without competition at the end of the project period if—

(1) The RTC is performing work in an area of continued high priority to the Secretary and is working on long-range solutions to rehabilitation problems;

(2) The RTC has submitted to the Secretary, not later than 15 months before the end of its project period, a formal request for renewal without competition;

(3) The RTC has submitted to the Secretary no later than 12 months before the expiration of its current project period a proposal for the activities to be conducted during the period for which funding is being requested;

(4) The Secretary has determined on the basis of documentation or expert consultation, that the Center may be a unique national resource and to discontinue it might be contrary to the interests of the Government, and that further consideration of the request for exemption from competition is warranted through an independent review of the Center and its application for the ensuing grant period;

(5) An independent peer review panel has reviewed the activities and products of the Center, including an on-site review where necessary, has reviewed the proposal for the new project period, and has made a recommendation to the Secretary on whether the Center should be continued; and

(6) The Secretary has determined, on the basis of the above factors, that to discontinue the work of the Center would result in an irretrievable loss of potential advances in knowledge and of substantial prior investment, and would be contrary to the interests of the Government.

(b) A noncompetitive award may be for a period up to 60 months. No Center may be renewed for more than 60 months beyond its original project period without competition.

(Authority: Sec. 204(b)(1); 29 U.S.C. 762(b)(1))

[50 FR 16674, Apr. 26, 1985]

PART 353—HANDICAPPED RESEARCH: REHABILITATION ENGINEERING PROGRAM

Subpart A—General

Sec.

353.1 What is the rehabilitation engineering program?

353.2 Who is eligible for assistance under this program?

353.3 What regulations apply to this program?

353.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

353.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

353.30 How is peer review conducted under this program?

353.31 What selection criteria are used under this program?

353.32 What are the priorities for funding under this program?

AUTHORITY: Title II of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended by Pub. L. 95-602 (29 U.S.C. 760-762; 92 Stat. 2962-2966).

SOURCE: 46 FR 45310, Sept. 10, 1981, unless otherwise noted.

Subpart A—General

§ 353.1 What is the rehabilitation engineering program?

This program is designed to support—(a) Development of innovative methods of applying advanced medical technology, scientific achievement, and psychiatric, psychological, and social knowledge to solve rehabilitation problems;

(b) Development of systems of technical and engineering information exchange and coordination; and

(c) Improvement in the distribution of technology devices and equipment to handicapped individuals.

(Authority: Secs. 200(3), 204(b)(2); (29 U.S.C. 760(3), 762(b)(2)))

§ 353.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible to apply under this program are set forth in 34 CFR 350.2.

(Authority: Sec. 204; (29 U.S.C. 762))

§ 353.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Authority: Secs. 202 and 204; (29 U.S.C. 761a and 762))

§ 353.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 353.10 What types of projects are authorized under this program?

The Rehabilitation Engineering Research program provides financial assistance for—

(a) Establishment and support of Rehabilitation Engineering Research Centers.

(i) Each center must be located in a clinical rehabilitation setting which fosters a close working relationship between researchers, service delivery personnel and service recipients;

(ii) Centers must cooperate with State and other appropriate agencies in developing systems of information exchange and coordination to promote the prompt utilization of research findings;

(iii) Centers may conduct research concerning the medical management of disabling conditions, the individual's adjustment to functional limitations and to the environment, service delivery systems, or other research of an engineering or technological nature, including basic research where related to rehabilitation techniques or services; and

(iv) The research activities of a center may address the rehabilitation problems of handicapped persons of any age.

(b) Research and demonstration projects of an engineering or technological nature as follows—

(i) Studies, analyses, and demonstrations of architectural and engineering design adapted to meet the special needs of handicapped individuals, and projects to reduce environmental barriers;

(ii) Cooperative research projects with public or private agencies and organizations to produce new equipment and devices for solving rehabilitation problems;

(iii) Projects concerning the use of existing telecommunication systems;

(iv) International research, demonstrations, training and exchange of experts and technical assistance when related to technology and engineering;

(v) A project to assess the feasibility of establishing a center to produce and distribute captioned video cassettes to deaf individuals; and

(vi) Joint projects with other Federal agencies and with private industry when related to technology or engineering.

(Authority: Secs. 204(b)(2), 204(a), 204(b)(5)-(7), 204(b)(10); (29 U.S.C. 762(b)(2), 762(a), 762(b)(5)-(7), 762(b)(10)))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 353.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30-350.32.

(Authority: Sec. 202(e); (29 U.S.C. 761a(e)))

§ 353.31 What selection criteria are used under this program?

The selection criteria used under this program are the criteria described in § 350.34.

(Authority: Secs. 202(e) and 202(i)(1); (29 U.S.C. 761a(e) and 761a(i)(1)))

[49 FR 9326, Mar. 12, 1984]

§ 353.32 What are the priorities for funding under this program?

(a) The Secretary may from time to time reserve funds to support some or all of the types of research centers or projects listed in 34 CFR 353.10.

(b) The Secretary advises the public of these priorities through an Application Notice published in the FEDERAL REGISTER.

(Secs. 202(g) and 204; (29 U.S.C. 761a(g) and 762))

PART 354—HANDICAPPED RESEARCH: MODEL RESEARCH AND TRAINING PROGRAM

Subpart A—General

Sec.
354.1 What is the model research and training program?
354.2 Who is eligible for assistance under this program?
354.3 What regulations apply to this program?
354.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

354.10 What types of centers are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

354.30 How is peer review conducted under this program?
354.31 What selection criteria are used under this program?
354.32 What are the priorities for funding under this program?

AUTHORITY: Title II of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended by Pub. L. 95-602 (29 U.S.C. 760-762; 92 Stat. 2962-2966).

SOURCE: 46 FR 45311, Sept. 10, 1981, unless otherwise noted.

Subpart A—General

§ 354.1 What is the model research and training program?

This program is designed to develop and utilize more advanced and effective methods of evaluating and developing the employment potential of handicapped individuals.

(Authority: Sec. 204(b)(12); (29 U.S.C. 762(b)(12)))

§ 354.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible to apply under this program are set forth in 34 CFR 350.2.

(Authority: Sec. 204; (29 U.S.C. 762))

§ 354.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Authority: Secs. 202 and 204; (29 U.S.C. 761a and 762))

§ 354.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Authority: Sec. 202(l)(1); (29 U.S.C. 761a(l)(1)))

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 354.10 What types of centers are authorized under this program?

The model research and training program provides financial assistance for establishing and operating model training centers.

(a) Each center must be associated with a rehabilitation service setting which fosters a close working relationship between researchers, service providers and service recipients.

(b) Each model center must—

(1) Research and develop model procedures for testing and evaluating the employment potential of handicapped individuals;

(2) Research and develop model new approaches for job placement of handicapped individuals, including new follow-up procedures relating to such placement;

(3) Research and develop model training programs to teach handicapped individuals skills which will lead to appropriate employment;

(4) Provide training and continuing education to improve the skills of personnel involved with the employment of handicapped individuals; and

(5) Provide information services regarding education, training, employment and job placement for handicapped individuals.

(Authority: Sec. 204(b)(12); (29 U.S.C. 762(b)(12)))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 354.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30-350.32.

(Authority: Sec. 202(e); (29 U.S.C. 761a(e)))

§ 354.31 What selection criteria are used under this program?

The selection criteria used under this program are the criteria described in § 350.34.

(Authority: Secs. 202(e) and 202(i)(1); (29 U.S.C. 761a(e) and 761(i)(1)))

[49 FR 9326, Mar. 12, 1984]

§ 354.32 What are the priorities for funding under this program?

(a) The Secretary may from time to time reserve funds to support the types of research activities listed in 34 CFR 354.10(b).

(b) The Secretary advises the public of these priorities through an Application Notice published in the FEDERAL REGISTER.

(Authority: Secs. 202(g) and 204; (29 U.S.C. 761a(g) and 762)).

PART 355—HANDICAPPED RESEARCH: KNOWLEDGE DISSEMINATION AND UTILIZATION

Subpart A—General

Sec.
355.1 What is the Knowledge Dissemination and Utilization Program?
355.2 Who is eligible for assistance under this program?
355.3 What regulations apply to this program?
355.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

355.10 What types of activities are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

355.30 How is peer review conducted under this program?
355.31 What selection criteria are used under this program?
355.32 What are the priorities for funding under this program?

AUTHORITY: Title II of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended by Pub. L. 95-602 (29 U.S.C. 760-762; 92 Stat. 2962-2966).

SOURCE: 46 FR 45312, Sept. 10, 1981, unless otherwise noted.

Subpart A—General

§ 355.1 What is the Knowledge Dissemination and Utilization Program?

This program is designed to support activities that will insure that rehabilitation knowledge generated from projects and centers funded by the Institute and from other sources is fully utilized to improve the lives of handicapped persons.

(Authority: Secs. 202, 204(a), and 204(b)(5); (29 U.S.C. 761a, 762(a) and 762(b)(5)))

§ 355.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible to apply under this program are described in 34 CFR 350.2.

(Authority: Sec. 204; (29 U.S.C. 762))

§ 355.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Authority: Secs. 202 and 204; (29 U.S.C. 761a and 762))

§ 355.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 355.10 What types of activities are authorized under this program?

The knowledge dissemination and utilization program provides financial assistance for the following types of projects—

(a) Domestic or international research utilization;

(b) Domestic or international information dissemination activities;

(c) Building public awareness about ways of rehabilitating handicapped persons;

(Authority: Secs. 200(2), 202(b)4-6, 204(a), 204(b)(5); (29 U.S.C. 761a(b)(2), 761a(b) (4-6), 762(a), 762(b)(5)))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 355.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30-350.32.

(Authority: Sec. 202e; (29 U.S.C. 761a(e))

§ 355.31 What selection criteria are used under this program?

The selection criteria used under this program are the criteria described in § 350.34.

(Authority: Secs. 202(e) and 202(i)(1); (29 U.S.C. 761a(e) and 761(i)(1)))

[49 FR 9326, Mar. 12, 1984]

§ 355.32 What are the priorities for funding under this program?

(a) The Secretary may from time to time reserve funds to support some or all of the types of projects listed in 34 CFR 355.10.

(b) The Secretary advises the public of these priorities through an Application Notice published in the FEDERAL REGISTER.

(Authority: Secs. 202(g) and 204; (29 U.S.C. 761a(g) and 762))

PART 356—HANDICAPPED RESEARCH: RESEARCH FELLOWSHIPS

Subpart A—General

Sec.

356.1 What is the Research Fellowships Program?
356.2 Who is eligible for assistance under this program?
356.3 What regulations apply to this program?
356.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

356.10 What types of activities are authorized?
356.11 What types of problems may be researched under the fellowship program?

Subpart C—How Does One Apply for Assistance Under This Program?

356.20 What are the application procedures under this part?
356.21 What is the fellowship review process?

Subpart D—How Does the Secretary Select a Fellow?

356.30 What selection criteria are used for this program?
356.31 How does the Secretary evaluate an application under this part?
356.32 What are the special considerations in selecting applications for funding under this part?

Subpart E—What Conditions Have to be Met by a Fellow?

356.40 What is the length of a fellowship award?
356.41 What are the employment limitations during a fellowship period?
356.42 What acknowledgement of support is required?

Subpart F—What Are the Administrative Responsibilities of a Fellow?

356.50 What kinds of payments are allowed under this program?
356.51 What reports are required?

Sec.
356.52 Are there other requirements?

AUTHORITY: Title II of the Rehabilitation Act of 1973 (Pub. L. 93-112) as amended by Pub. L. 95-602 (29 U.S.C. 760-762; 92 Stat. 2962-2966), unless otherwise noted.

SOURCE: 46 FR 45312, Sept. 10, 1981, unless otherwise noted.

Subpart A—General

§ 356.1 What is the Research Fellowships Program?

The purpose of this program is to build research capacity by providing support to highly qualified individuals to perform research on the rehabilitation of disabled persons.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

§ 356.2 Who is eligible for assistance under this program?

(a) Only individuals are eligible to be recipients of Fellowships.

(b) Any individual is eligible for assistance under this program who has training and experience that indicate a potential for engaging in scientific research related to the solution of rehabilitation problems of handicapped persons.

(c) This program provides two categories of Fellowships: Merit Fellowships and Distinguished Fellowships.

(1) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications.

(2) The Secretary awards Merit Fellowships to individuals in earlier stages of their careers in research. To be eligible for a Merit Fellowship, an individual must have either advanced professional training or experience in independent study in an area which is directly pertinent to disability and rehabilitation.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

§ 356.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The peer review requirements contained in 34 CFR 350.31-350.32.

(b) The regulations in this part—34 CFR Part 356; and

(c) 45 CFR Part 46 (Protection of Human Subjects)

(Authority: Sec. 202(d); (29 U.S.C. 761a(d)))

§ 356.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Authority: Sec. 202(i)(1); (29 U.S.C. 761a(i)(1)))

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 356.10 What types of activities are authorized?

(a) Fellows may conduct original research in any area authorized by section 204 of the Act.

(b) Each year the Secretary may determine that research is needed in certain areas authorized under section 204 of the Act and may set aside funds to provide fellowship assistance for research in these specific areas. The Secretary publishes the selected priorities, if any, in a notice in the FEDERAL REGISTER.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

§ 356.11 What types of problems may be researched under the fellowship program?

Problems encountered by handicapped persons in their daily lives that are due to the presence of handicapping condition, problems associated with the provision of rehabilitation services to handicapped persons, and problems connected with the conduct of handicapped research may be addressed under this program.

(Authority: Sec. 202(d), 202(g)(1), 204; (29 U.S.C. 761a(d), 761a(g)(1), 762))

Subpart C—How Does One Apply for Assistance Under This Program?

§ 356.20 What are the application procedures under this part?

From time to time the Secretary will publish in the FEDERAL REGISTER an Application Notice that announces the availability of fellowship assistance under this part.

(Authority: Sec. 202(d); (29 U.S.C. 761a(d)))

§ 356.21 What is the fellowship review process?

The Secretary reviews applications for Fellowships in accordance with the peer review requirements governing grants in 34 CFR 350.31 and 350.32 and the selection criteria contained in § 356.30.

(Approved by the Office of Management and Budget under control number 1800-0027.)

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

Subpart D—How Does the Secretary Select a Fellow?

§ 356.30 What selection criteria are used for this program?

The Secretary evaluates an application for a Fellowship on the basis of—

(a) Quality and level of formal education, previous work experience, and recommendations of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Act and the mission of NIHR.

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

(Approved by the Office of Management and Budget under control number 1800-0027)

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

§ 356.31 How does the Secretary evaluate an application under this part?

The Secretary awards the following points for each application based on how well the applicant addresses the two criteria in § 356.30: Outstanding (5); Superior (4); Satisfactory (3); Marginal (2); Poor (1).

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

§ 356.32 What are the special considerations in selecting applications for funding under this part?

(a) The Secretary reserves funds to support some or all of the applications which have been awarded a rating of superior or better (4-5 points) under § 356.31.

(b) In making a final selection of applicants to support under this program, the Secretary considers the extent to which applicants rated outstanding or superior present a unique opportunity to effect a major advance in knowledge, address critical problems in innovative ways, present proposals which are consistent with the NIHR Long-Range Plan, build research capacity within the field, or complement and significantly increases the potential value of already planned research and related activities.

(Approved by the Office of Management and Budget under control number 1800-0027)

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

Subpart E—What Conditions Have To Be Met by a Fellow?

§ 356.40 What is the length of a Fellowship award?

The Secretary awards Fellowships for a period of 12 months. Under exceptional circumstances, the Secretary may extend the period of a Fellowship; such an extension may not exceed 12 months.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

§ 356.41 What are the employment limitations during a fellowship period?

The Secretary may require a research fellow to work full time on authorized fellowship activities.

(Authority: Sec. 202(d); (29 U.S.C. 761a(d)))

§ 356.42 What acknowledgement of support is required?

Publication, distribution, and disposition of all manuscripts and other materials resulting from a fellowship awarded under this part must acknowledge that assistance was received from the Department and the Institute. Three copies of these publications or other materials must be furnished to the Secretary.

(Authority: Sec. 202(d); (29 U.S.C. 761a(d)))

Subpart F—What are the Administrative Responsibilities of a Fellow?

§ 356.50 What kinds of payments are allowed under this program?

A Fellowship award in either the Distinguished or Merit category includes a fixed stipend and a flat rate allowance for research and research-related expenses including travel expenses.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

§ 356.51 What reports are required?

Fellows shall submit final reports. Each report must contain at a minimum an analysis of the significance of the project and an assessment of the degree to which the objectives of the project have been achieved.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

§ 356.52 Are there other requirements?

The Secretary may require fellows to attend one or more meetings in connection with Fellowship activities.

(Authority: Sec. 202(d); 29 U.S.C. 761a(d))

[49 FR 24979, June 18, 1984]

PART 357—HANDICAPPED RESEARCH: FIELD-INITIATED RESEARCH PROJECTS

Subpart A—General

Sec.

357.1 What is the field-initiated research projects program?
357.2 Who is eligible for assistance under this program?
357.3 What regulations apply to this program?
357.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

357.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

357.30 How is peer review conducted under this program?
357.31 How does the Secretary evaluate an application under this program?
357.32 What selection criteria are used under this program?
357.33 What are the priorities for funding under this program?

AUTHORITY: Title II of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended by Pub. L. 95-602 (29 U.S.C 760-762; 92 Stat. 2962-2966), unless otherwise noted.

SOURCE: 49 FR 9326, Mar. 12, 1984, unless otherwise noted.

Subpart A—General

§ 357.1 What is the field-initiated research projects program?

This program is designed—

(a) To encourage eligible parties to originate valuable ideas for research projects to further the purposes specified in 34 CFR 351.1;

(b) To support research projects which address important activities not contained within announced NIHR priorities; and

(c) To support research projects which address an NIHR priority in a more promising way than already planned work.

(Authority: Secs. 200(1); 202(i)(1); 204; (29 U.S.C. 760(1), 761a(i)(1), 762))

§ 357.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible to apply under this program are described in 34 CFR 350.2.

(Authority: Sec. 204; (29 U.S.C. 762))

§ 357.3. What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Authority: Secs. 202 and 204; 29 U.S.C 761a, 762)

§ 357.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Authority: Sec. 202(i) (1); (29 U.S.C. 761a(i)(1)))

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 357.10 What types of projects are authorized under this program?

The Field-Initiated Research Projects program provides financial assistance for the types of projects authorized under 34 CFR 351.10 (Research and Demonstration Projects Program).

(Authority: Secs. 202(i)(1), 204(a), 204(b)(3-5), 204(b)(7-9), 204(b)(11); 29 U.S.C. 761a(i)(1); 762(a), 762(b)(3-5), 762(b)(7-9), 762(b)(11))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 357.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30-350.32.

(Sec. 202(e); (29 U.S.C 761a(e)))

§ 357.31 How does the Secretary evaluate an application under this program?

The Secretary evaluates an application under this program for scientific merit on the basis of the selection criteria in § 357.32, and according to the procedures in § 350.33.

(Authority: Secs. 202(e) and 202(i)(1); (29 U.S.C. 761a(e) and 761a(i)(1)))

(Approved by the Office of Management and Budget under OMB control number 1820-0027)

§ 357.32 What selection criteria are used under this program?

The selection criteria used under this program are the criteria described in § 350.34.

(Authority: Secs. 202(e) and 202(i)(1); (29 U.S.C. 761a(e) and 761a(i)(1)))

§ 357.33 What are the priorities for funding under this program?

(a) The Secretary reserves funds to support some or all of the proposals which have been awarded a rating of 80 points or more under the procedures described in § 357.31.

(b) In making a final selection of proposals to support under this program, the Secretary will consider the extent to which proposals that have been awarded a rating of 80 points or more meet one or more of the following conditions:

(1) The proposal represents a unique opportunity to conduct research which has the potential for effecting a major advancement in knowledge;

(2) The proposal addresses an important research problem in a singular or innovative way;

(3) The proposal complements already planned research and will increase the potential value of that research in a significant way.

(Authority: Secs. 202(g) and 202(i)(1); (29 U.S.C. 761a(g) and 761a(i)(1))

PART 358—HANDICAPPED RESEARCH: INNOVATION GRANTS PROGRAM

Subpart A—General

Sec.

358.1 What is the Innovation Grants program?
358.2 Who is eligible for assistance under this program?
358.3 What regulations apply to this program?

Sec.

358.4 What definitions apply to this program?

358.5—358.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

358.10 What types of projects are authorized under this program?

358.11—358.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

358.30 How is peer review conducted under this program?

358.31 How does the Secretary select applications for new grants?

358.32 What selection criteria does the Secretary use in reviewing applications under this program?

358.33 What are the priorities for funding under this program?

358.34 What is the maximum amount of a grant for any fiscal year?

358.35—358.39 [Reserved]

AUTHORITY: Sec. 204(b)(13) of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended by Pub. L. 98-221, 98 Stat. 23-24 (29 U.S.C. 762(b)(13)), unless otherwise noted.

SOURCE: 50 FR 16674, Apr. 26, 1984, unless otherwise noted.

Subpart A—General

§ 358.1 What is the Innovation Grants program?

This program is designed to provide financial support to projects that—

(a) Test new concepts and innovative ideas;

(b) Demonstrate research results of high potential benefits;

(c) Purchase and evaluate prototype aids and devices;

(d) Develop unique rehabilitation training curricula; and

(e) Respond to special initiatives of the Secretary, including projects to conduct feasibility, planning, and evaluation studies, conferences, and other activities to disseminate specific research findings.

(Authority: Sec. 204(b)(13); 29 U.S.C. 762(b)(13))

§ 358.2 Who is eligible for assistance under this program?

The agencies and organizations eligible to apply under this program are described in 34 CFR 350.2

(Authority: Sec. 204; 29 U.S.C. 762)

§ 358.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program, except for 34 CFR 75.217(c)-(e).

(Authority: Sec. 204; 29 U.S.C. 762)

§ 358.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Authority: Sec. 202(i)(1); 29 U.S.C. 761a(i)(1))

§§ 358.5—358.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 358.10 What types of projects are authorized under this program?

The Innovation Grants program provides financial assistance for the following types of projects:

(a) Research, demonstration, and related activities to test new concepts and innovative ideas in rehabilitation of disabled individuals or to demonstrate research results of high potential benefits.

(b) Research, demonstration, and related activities which are responsive to special initiatives of the Secretary, are unique or innovative, or could not be carried out in a timely manner under the Institute's other programs.

(c) Projects to purchase and evaluate prototype aids and devices, or to demonstrate innovative approaches to producing, testing, marketing, and distributing selected aids and devices.

(d) Projects to develop and test unique rehabilitation training curricula, including training for rehabilitation-related research as well as any rehabilitation-related services.

(e) Research, demonstration, or development projects, feasibility studies, planning activities, evaluation studies dissemination of information, conferences, surveys or statistical analyses, or policy studies in areas concerned with improved rehabilitation, especially those which offer timely opportunities for high potential benefit or which must be conducted expeditiously if their potential benefits are to be realized.

(Authority: Sec. 204(b)(13); 29 U.S.C. 762(b)(13))

§§ 358.11—358.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 358.30 How is peer review conducted under this program?

(a) The Secretary may, at any time, convene a peer review panel to review an application received in response to an application notice.

(b) Peer review is conducted under this program in accordance with 34 CFR 350.30-350.32, using the selection criteria in § 358.32.

(Authority: Secs. 202(e) and 204(b)(13); 29 U.S.C. 761a(e) and 762(b)(13))

§ 358.31 How does the Secretary select applications for new grants?

(a) After the peer review panel evaluates an application, the Secretary reviews and selects an application on the basis of—

(1) Scientific and technical merit, in accordance with the selection criteria in § 358.32;

(2) The priorities in § 358.33, if appropriate; and

(3) Any other requirement that applies to the selection of applications for new grants.

(b) In selecting an application for a new grant, the Secretary may consider the following:

(1) The information in the application.

(2) The evaluation of the application by the peer review panel.

(3) Any other information relevant to a criterion, priority, or other requirement that applies to the selection of applications for new grants.

(c) (1) The Secretary may, at any time, select an application for funding under this part.

(2) If the Secretary does not select an application for funding when it is reviewed under this section, the Secretary may select it for funding at a later date in the same fiscal year.

(Authority: Secs. 202(e) and 202(i)(1); 29 U.S.C. 761a(e) and 761a(i)(1))

(Approved by the Office of Management and Budget under control number 1820-0027)

§ 358.32 What selection criteria does the Secretary use in reviewing applications under this program?

The Secretary uses the criteria in this section to evaluate applications under this program. The maximum score for all the criteria is 100 points.

(a) *Importance of the project* (50 points). The Secretary reviews each application to determine to what degree the proposed activity will address a significant need of the target population and will meet the purposes of this part.

(b) *Project design or methodology* (25 points). The Secretary reviews each application to determine to what degree the underlying hypothesis or conceptual model is sound; the project design is likely to achieve the desired objectives; and the evaluation plan is appropriate.

(c) *Plan of operation* (25 points). The Secretary reviews each application to determine the extent to which the qualifications and background of the key personnel, the management and financial plan, and the capability and resources of the applicant organization demonstrate that the applicant will be able to carry out the proposed project.

(Authority: Sec. 204(b)(13); 29 U.S.C. 762(b)(13))

§ 358.33 What are the priorities for funding under this program?

The Secretary may give priority to applications that have been awarded a rating of 60 points or more under § 358.32 and meet one or both of the following conditions:

(a) The proposed project represents a unique opportunity to conduct research, demonstrate, evaluate, disseminate, train, or prepare for advances in knowledge to improve rehabilitation services to disabled persons.

(b) The proposed project is particularly pertinent to rehabilitation needs at that time and is likely to contribute important knowledge in a timely manner.

(Authority: Sec. 204(b)(13); 29 U.S.C. 762(b)(13))

§ 358.34 What is the maximum amount of a grant for any fiscal year?

The maximum amount of a grant under this program for any fiscal year is $50,000.

(Authority: Sec. 204(b)(13); 29 U.S.C. 762(b)(13))

§§ 358.35—358.39 [Reserved]

PART 359—HANDICAPPED RESEARCH: SPECIAL PROJECTS AND DEMONSTRATIONS FOR SPINAL CORD INJURIES

Subpart A—General

Sec.

359.1 What is the Special Projects and Demonstrations for Spinal Cord Injuries program?
359.2 Who is eligible for assistance under this program?
359.3 What regulations apply to this program?
359.4 What definitions apply to this program?
359.5—359.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

359.10 What types of projects are authorized under this program?
359.11 What activities must each recipient carry out under this program?
359.12—359.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make A Grant?

359.30 How is peer review conducted under this program?
359.31 What selection criteria does the Secretary use in reviewing applications under this program?
359.32—359.39 [Reserved]

AUTHORITY: Sec. 311(a) of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended by Pub. L. 98-221, 98 Stat. 23-24 (29 U.S.C. 777a(a)), unless otherwise noted.

Source: 50 FR 16676, Apr. 26, 1985, unless otherwise noted.

Subpart A—General

§ 359.1 What is the Special Projects and Demonstrations for Spinal Cord Injuries Program?

This program provides assistance to establish innovative projects for the delivery, demonstration, and evaluation of comprehensive medical, vocational, and other rehabilitation services to meet the wide range of needs of individuals with spinal cord injuries.

(Authority: Sec. 311(a); 29 U.S.C. 777a(a))

§ 359.2 Who is eligible for assistance under this program?

Public and other nonprofit agencies and organizations are eligible to apply for assistance under this program.

(Authority: Sec. 311(a); 29 U.S.C. 777a(a))

§ 359.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Authority: Secs. 202(l)(1) and 311(a); 29 U.S.C. 761a(l)(1) and 777a(a))

§ 359.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Authority: Secs. 202(l)(1) and 311(a); 29 U.S.C. 761(l)(1) and 777a(a))

§§ 359.5—359.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 359.10 What types of projects are authorized under this program?

This program provides assistance for demonstration projects that—

(a) Provide comprehensive rehabilitation services to individuals with spinal cord injuries; and

(b) Conduct spinal cord research, including clinical research and the analysis of standardized data in collaboration with other related projects.

(Authority: Sec. 311(a) of the Act; 29 U.S.C. 777a(a))

§ 359.11 What activities must each recipient carry out under this program?

Each recipient, whether administering a project separately under this part or in coordination with other activities supported under Title II of the Act, shall—

(a) Establish a multidisciplinary system of providing rehabilitation services specifically designed to meet the special needs of individuals with spinal cord injuries, including emergency medical services, acute care, vocational and other rehabilitation services, community and job placement, and long-term community follow up and health maintenance. The system must be established on an appropriate geographical basis that reflects patterns of patient flow, and must be administered in close coordination with similar programs of the Veterans Administration, the National Institutes of Health, and other public and private agencies and institutions where appropriate;

(b) Demonstrate and evaluate both the service and cost benefits of a regional service system to those individuals with spinal cord injuries who might be served within that system;

(c) Establish within the system a rehabilitation research environment for the achievement of new knowledge leading to the reduction and treatment of complications arising from spinal cord injury and the development of new techniques of medical management and rehabilitation;

(d) Demonstrate and evaluate the development and application of improved methods and equipment essential to the care, management, and rehabilitation of individuals with spinal cord injury;

(e) Demonstrate methods of community outreach and education for individuals with spinal cord injury in areas such as housing, transportation, recreation, employment, and other community activities; and

(f) Participate as directed by the Secretary in national studies of the benefits of a spinal cord injury service system by contributing to a national database and by other means as required by the Secretary.

(Authority: Sec. 311(b); 29 U.S.C. 777a(b))

§§ 359.12—359.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 359.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30-350.32, using the selection criteria in § 359.31.

(Authority: Sec. 202(e) and 311(a); 29 U.S.C. 761a(e) and 777a(a))

§ 359.31 What selection criteria does the Secretary use in reviewing applications under this program?

The Secretary uses the criteria in this section to evaluate applications under this program. The maximum score for all the criteria is 100 points.

(a) *Project design* (20 points). The Secretary reviews each application to determine to what degree—

(1) There is a clear description of how the objectives of the project relate to the purpose of the program;

(2) The research is likely to produce new and useful information;

(3) The need and target population are adequately defined;

(4) The outcomes are likely to benefit the defined target population;

(5) The research hypotheses are sound; and

(6) The research methodology is sound in the sample design and selection, the data collection plan, the measurement instruments, and the data analysis plan.

(b) *Service comprehensiveness* (20 points). The Secretary reviews each application to determine to what degree—

(1) The services to be provided within the project are comprehensive in scope, and include emergency medical services, intensive and acute medical care, rehabilitation management,

psychosocial and community reintegration, and follow up;

(2) A broad range of vocational and other rehabilitation services will be available to severely handicapped individuals within the project; and

(3) Services will be coordinated with those services provided by other appropriate community resources.

(c) *Plan of operation* (15 points). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(d) *Quality of key personnel* (10 points). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training or experience, or both, in spinal cord injury care and rehabilitation and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature or methods, or both;

(3) All the disciplines necessary to establish the multidisciplinary system described in § 359.11(a) are effectively represented;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(e) *Adequacy of resources* (10 points). The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative and other necessary support is evident.

(f) *Budget/cost effectiveness* (10 points). The Secretary reviews each application to determine to what degree—

(1) The budget for the project is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project; and

(3) The budget for subcontracts (if required) is detailed and appropriate.

(g) *Dissemination/utilization* (5 points). The Secretary reviews each application to determine to what degree—

(1) There is a clearly defined plan for dissemination and utilization of project findings;

(2) The research results are likely to become available to others working in the field;

(3) The means to disseminate and promote utilization by others are defined; and

(4) The utilization approach is likely to address the defined need.

(h) *Evaluation plan* (10 points). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

(Authority: Secs. 202(e) and 311(a); 29 U.S.C. 761a(e) and 777a(a))

§§ 359.32—359.39 [Reserved]

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

Subpart A—General

Sec.

361.1 The State vocational rehabilitation services program.

Subpart B—State Plans for Vocational Rehabilitation Services

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361.3 State plan approval.
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361.8 State unit director.
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361.11 Shared funding and administration of special joint projects or programs.
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361.13 Cooperative programs involving funds from other public agencies.
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STATE PLAN CONTENT: PROVISION AND SCOPE OF SERVICE

361.30 Processing referrals and applications.
361.31 Eligibility for vocational rehabilitation services.
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361.34 Extended evaluation to determine vocational rehabilitation potential.
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361.36 Order of selection for services.
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361.45 Standards for facilities and providers of services.
361.46 Rates of payment.
361.47 Participation by handicapped individuals in the costs of vocational rehabilitation services.
361.48 Appeal procedures.
361.49 Protection, use and release of personal information.
361.50 Scope of State unit program: Management services and supervision for small business enterprises for severely handicapped individuals.
361.51 Scope of State unit program: Establishment of rehabilitation facilities.
361.52 Scope of State unit program: Construction of rehabilitation facilities.
361.53 Scope of State unit program: Facilities and services for groups of handicapped individuals.
361.54 Scope of State unit program: Telecommunications systems.
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361.56 Utilization of community resources.
361.57 Utilization of profitmaking organizations for on-the-job training in connection with selected projects.
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FEDERAL FINANCIAL PARTICIPATION

361.70 Effect of State rules.
361.71 Vocational rehabilitation services to individuals.
361.72 Management services and supervision for small business enterprises for severely handicapped individuals.

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361.73 Establishment of rehabilitation facilities.
361.74 Construction of rehabilitation facilities.
361.75 Other vocational rehabilitation services for the benefit of groups of handicapped individuals.
361.76 State and local funds.
361.77 Shared funding and administration of joint projects or programs.
361.78 Waiver of Statewideness.

ALLOTMENT AND PAYMENT

361.85 Allotment of Federal funds for vocational rehabilitation services.
361.86 Payments for allotments for vocational rehabilitation services.
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361.182 What the record is.
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361.184 Decisions.
361.185 When a decision is effective.
361.186 How the State may appeal.

AUTHORITY: Sec. 12(c) of the Rehabilitation Act of 1973, (29 U.S.C. 711(c)), unless otherwise noted.

Subpart A—General

§ 361.1 The State vocational rehabilitation services program.

(a) *General.* Part 361 includes all requirements relative to the conduct of State vocational rehabilitation service programs under State plans for vocational rehabilitation services authorized under Title I of the Rehabilitation Act of 1973, as amended. Part 361 covers procedures to be followed by a State vocational rehabilitation agency in submitting a State plan for approval by the Secretary and the required scope and content of an appropriate State plan. Part 361 also specifies those costs under State plans for which Federal financial participation is available.

(b) *Regulations which apply to the State vocational rehabilitation service program.* The following regulations apply to the State plan for vocational rehabilitation services program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions the Apply to Department Regulations), and Part 78 (Education Appeal Board) except for hearings under Subpart G of Part 361.

(2) The regulations in this Part 361.

(c) *Definitions which apply to the state vocational rehabilitation service program.* (1) The following terms used in this Part 361 are defined in 34 CFR Part 77:

"EDGAR"
"Fiscal year"
"Nonprofit"
"Private"
"Public"
"Secretary"
"State"
"Work of Art"

(2) The following definitions also apply to this Part 361:

"Act" means the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

"*American Indian*" means a person who is a member of an Indian tribe.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

"*Blind*" or "*blind individual*" means a person who is blind within the meaning of the law relating to vocational rehabilitation in each State.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

"*Secretary*" means the Secretary of the Rehabilitation Services Administration.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

"*Construction of a rehabilitation facility*" means:

(i) The construction of new buildings, the acquisition of existing buildings, or the expansion, remodeling, alteration or renovation of existing buildings which are to be utilized for rehabilitation facility purposes; or

(ii) The acquisition of initial equipment of such new, newly acquired, newly expanded, newly remodeled, newly altered or newly renovated buildings.

(Authority: Sec. 7(1) of the Act; 29 U.S.C. 706(1))

"*Designated State unit*" or "*State unit*" means either:

(i) The State agency vocational rehabilitation bureau, division, or other organizational unit which is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of handicapped individuals and which is responsible for the administration of the vocational rehabilitation program of the State agency; or

(ii) The independent State commission, board, or other agency which has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Authority: Sec. 7(3) of the Act; 29 U.S.C. 706(d))

"*Eligible*" or "*eligibility,*" when used in relation to an individual's qualification for vocational rehabilitation services, refers to a certification that:

(i) An individual has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment, and

(ii) Vocational rehabilitation services may reasonably be expected to benefit the individual in terms of employability.

(Authority: Sec. 7(7) of the Act; 29 U.S.C. 706(7))

"*Employability*" refers to a determination that the provision of vocational rehabilitation services is likely to enable an individual to enter or retain employment consistent with his capacities and abilities in the competitive labor market; the practice of a profession; self-employment; homemaking; farm or family work (including work for which payment is in kind rather than in cash); sheltered employment; homebound employment; or other gainful work.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

"*Establishment of a rehabilitation facility*" means;

(i) The acquisition, expansion, remodeling, or alteration of existing buildings, necessary to adapt them or increase their effectiveness for rehabilitation facility purposes;

(ii) The acquisition of initial or additional equipment for these buildings essential for providing vocational rehabilitation services; or

(iii) The initial or additional staffing of a rehabilitation facility for a period, in the case of any individual staff person, not longer than 4 years and 3 months.

(Authority: Sec. 7(4) of the Act; 29 U.S.C. 706(4))

"*Evaluation of vocational rehabilitation potential*" means, as appropriate, in each case:

(i) A preliminary diagnostic study to determine that an individual is eligible for vocational rehabilitation services;

(ii) A thorough diagnostic study consisting of a comprehensive evaluation of pertinent factors bearing on the individual's handicap to employment and vocational rehabilitation potential, in order to determine which vocational rehabilitation services may be of benefit to the individual in terms of employability;

(iii) Any other goods or services necessary to determine the nature of the handicap and whether it may reasonably be expected that the individual can benefit from vocational rehabilitation services in terms of employability;

(iv) Referral to other agencies or organizations, when appropriate; and

(v) The provision of vocational rehabilitation services to an individual during an extended evaluation of rehabilitation potential for the purpose of determining whether the individual is a handicapped individual for whom a vocational goal is feasible.

(Authority: Sec. 7(5) of the Act; 29 U.S.C. 706(5))

"*Family member*" or "*member of the family*" means any relative by blood or marriage of a handicapped individual and other individual living in the same household with whom the handicapped individual has a close interpersonal relationship.

(Authority: Sec. 103(a)(3) of the Act; 29 U.S.C. 723(a)(3))

"*Handicapped individual*" except in § 361.15(b), §361.51(e), and § 361.52(g) means an individual:

(i) Who has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

(ii) Who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services, or for whom an extended evaluation of vocational rehabilitation potential is necessary to determine whether he or she might reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services;

(Authority: Sec. 7(7)(A) of the Act; 29 U.S.C. 706(7)(A))

"*Handicapped individual,*" for purposes of § 361.15(b), § 361.51(e), and § 361.52(g), means an individual:

(i) Who has a physical or mental impairment which substantially limits one or more major life activities;

(ii) Who has a record of such an impairment; or

(iii) Who is regarded as having such an impairment.

(Authority: Sec. 7(7)(B) of the Act; 29 U.S.C. 706(7)(B))

"*Local agency,*" unless the context clearly indicates differently, means an agency of a unit of general local government or of an Indian tribal organization (or combination of such units or organizations) which has the sole responsibility under an agreement with the State agency to conduct a vocational rehabilitation program in the locality under the supervision of the State agency in accordance with the State plan.

(Authority: Sec. 7(8) of the Act; 29 U.S.C. 706(8))

"*Physical and mental restoration services*" means:

(i) Medical or corrective surgical treatment:

(ii) Diagnosis and treatment for mental or emotional disorders by a physician skilled in the diagnosis and treatment of such disorders or by a psychologist licensed or certified in accordance with State laws and regulations;

(iii) Dentistry;

(iv) Nursing services;

(v) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(vi) Convalescent or nursing home care;

(vii) Drugs and supplies;

(viii) Prosthetic, orthotic or other assistive devices including hearing aids, essential to obtaining or retaining employment;

(ix) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids, prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(x) Podiatry;

(xi) Physical therapy;

(xii) Occupational therapy;

(xiii) Speech or hearing therapy;

(xiv) Psychological services;

(xv) Therapeutic recreation services;

(xvi) Medical or medically related social work services;

(xvii) Treatment of either acute or chronic medical complications and emergencies which are associated with or arise out of the provision of physical and mental restoration services; or which are inherent in the condition under treatment;

(xviii) Special services for the treatment of individual suffering from end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(xix) Other medical or medically related rehabilitation services including art therapy, dance therapy, music therapy and psychodrama.

(Authority: Sec. 103(a)(4) of the Act; 29 U.S.C. 723(a)(4))

"*Physical or mental disability*" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

(Authority: Sec. 7(7)(A)(i) of the Act; 29 U.S.C. 706(7)(A)(i))

"*Rehabilitation facility*" means a facility which is operated for the primary purpose of providing vocational rehabilitation services to handicapped individuals, and which provides singly or in combination one or more of the following services for handicapped individuals:

(i) Vocational rehabilitation services, including under one management, medical, psychiatric, psychological, social, and vocational services;

(ii) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(iii) Prevocational conditioning or recreational therapy;

(iv) Physical and occupational therapy;

(v) Speech and hearing therapy;

(vi) Psychological and social services;

(vii) Evaluation of rehabilitation potential;

(viii) Personal and work adjustment;

(ix) Vocational training with a view toward career advancement (in combination with other rehabilitation services);

(x) Evaluation or control of specific disabilities;

(xi) Orientation and mobility services and other adjustment services to blind individuals; and

(xii) Transitional or extended employment for those handicapped individuals who cannot be readily absorbed in the competitive labor market.

(Authority: Sec. 7(11) of the Act; 29 U.S.C. 706(11))

"*Reservation*" means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Authority: Sec. 130(e) of the Act, 29 U.S.C. 750(e))

"*Severely handicapped individual*" means a handicapped individual:

(i) Who has a severe physical or mental disability which seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, work tolerance, or work skills) in terms of employability; and

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

(Authority: Sec. 7(13) of the Act; 29 U.S.C. 706(13))

"*State agency*" means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of blind individuals.

(Authority: Sec. 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

"*State plan*" means the State plan for vocational rehabilitation services, or the vocational rehabilitation services part of a consolidated rehabilitation plan under § 361.2(d) of this part.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

"*Substantial handicap to employment*" means that a physical or mental disability (in light of attendant medical, psychological, vocational, educational, and other related factors) impedes an individual's occupational performance, by preventing his obtaining, retaining, or preparing for employment consistent with his capacities and abilities.

(Authority: Secs. 7(7)(A)(i) and 12(c) of the Act; 29 U.S.C. 706(7)(A)(i) and 711(c))

"*Vocational rehabilitation services*" when provided to an individual, means those services listed in § 361.42 of this part.

(Authority: Sec. 103(a) of the Act, 29 U.S.C. 723(a))

"*Vocational rehabilitation services*" when provided for the benefit of groups of individuals, also means:

(i) In the case of any type of small business enterprise operated by severely handicapped individuals under the supervision of the State unit, management services, and supervision and acquisition of vending facilities or other equipment, and initial stocks and supplies;

(ii) The establishment of a rehabilitation facility;

(iii) The construction of a rehabilitation facility;

(iv) The provision of other facilities and services, including services provided at rehabilitation facilities, which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized written rehabilitation program of any one handicapped individual;

(v) The use of existing telecommunications systems; and

(vi) The use of services providing recorded material for blind persons and captioned films or video cassettes for deaf persons.

(Authority: Sec. 103(b) of the Act; 29 U.S.C. 723(b))

"*Workshop*" means a rehabilitation facility, or that part of a rehabilitation facility, engaged in production or service operation for the primary purpose of providing gainful employment as an interim step in the rehabilition process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist.

(Authority: Secs. 7(11) and 12(c) of the Act; 29 U.S.C. 706(11) and 711(c))

[46 FR 5524, Jan. 19, 1981, as amended at 50 FR 38629, Sept. 23, 1985]

Subpart B—State Plans for Vocational Rehabilitation Services

SOURCE: 46 FR 5526, Jan. 19, 1981, unless otherwise noted.

STATE PLAN CONTENT: ADMINISTRATION

§ 361.2 The State plan: General requirements.

(a) *Purpose.* In order for a State to be eligible for grants from the allotment of funds under Title I of the Act, it must submit an approvable State plan covering a three-year period and meeting Federal requirements. The State plan must provide for financial participation by the State, or if the State chooses, by the State and local agencies jointly, and must provide that it will be in effect in all political subdivisions of the State, except as specifically provided in § 361.11 (Shared funding and administration of special joint projects or programs) and § 361.12 (Waiver of Statewideness).

(b) *Form and content.* The State plan must contain, in the form prescribed by the Secretary a description of the State's vocational rehabilitation program, the plans and policies to be followed in carrying out the program and other information requested by the Secretary. The State plan must consist of:

(1) A part providing detailed commitments specified by the Secretary which must be amended or reaffirmed every three years; and

(2) A part containing a fiscal year progammming description, based on the findings of the continuing Statewide studies (§ 361.17), the annual evaluation of the effectiveness of the State's program (§ 361.17) and other pertinent reviews and studies. This annual programming description must include:

(i) Changes in policy resulting from the continuing Statewide studies and the annual evaluation of the effectiveness of the program;

(ii) Estimates of the number of handicapped individuals who will be served with funds provided under the Act;

(iii) A description of the methods used to expand and improve services to those individuals who are the most severely handicapped;

(iv) A description of the order of selection (§ 361.36) of groups of handicapped individuals to whom vocational rehabilitation services will be provided (unless the designated State unit assures that it is serving all eligible handicapped individuals who apply); and

(v) A statement of the general outcome and service goals to be achieved for handicapped individuals in each priority category within the order of selection in effect in the State and the time within which these goals may be achieved. These goals must include those objectives, established by the State unit and consistent with those set by the Secretary in instructions concerning the State plan, which are measurable in terms of service expansion or program improvement in specified program areas, and which the State unit plans to achieve during a specified period of time.

(c) *Separate part relating to rehabilitation of the blind.* If a separate State agency for the blind administers or supervises the administration of that part of the State plan relating to the rehabilitation of blind individuals, that part of the State plan must meet all requirements applicable to a separate State plan.

(d) *Consolidated rehabilitation plan.* The State may choose to submit a consolidated rehabilitation plan which includes the State plan for vocational rehabilitation services and either the State plan for independent living rehabilitation services or the State's plan for its program for persons with developmental disabilities, or both. If the State's plan for persons with developmental disabilities is included, the State planning and advisory council for developmental disbilities and the agency or agencies administering the State's program for persons with developmental disabilities must have concurred in the submission of the consolidated rehabilitation plan. A consolidated rehabilitation plan must comply, and be administered in accordance with, this Act and the Developmental Disabilities Assistance and Bill of Rights Act. The Secretary may approve the consolidated rehabilitation plan to serve as the substitute for the separate plans which would otherwise be required.

(e) *Designation of a new State agency or a new State unit.* Before designating a new State agency or a new State unit, the chief administrative officer of the State agency must assure the Secretary in writing that the vocational rehabilitation program will continue to operate in conformity with the most recent approved State plan, until a new State plan is submitted. The State agency must submit a new State plan within 90 days following the designation of a new State agency or a new State unit.

(f) *Transition to new State agency or State unit.* When a new State agency or a new State unit is designated under paragraph (e) of this section, the State agency must turn over to that agency program and financial records and other pertinent information and resources necessary for the effective conduct of the vocational rehabilitation program.

(Authority: Secs. 6 and 101(a) of the Act; 29 U.S.C. 705 and 721(a))

§ 361.3 State plan approval.

The State plan must be submitted for approval for each three-year period no later than July 1 of the year preceding the first fiscal year for which the State plan is submitted.

(Authority: Sec. 101(b) of the Act; 29 U.S.C. 721(b))

§ 361.4 Withholding of funds.

(a) *When withheld.* Payments under sections 111 or 121 of the Act may be withheld, suspended, or limited as provided by section 101(c) of the Act, when after a reasonable notice and opportunity for hearing has been given to the State agency, the Secretary finds that:

(1) The State plan has been so changed that it no longer conforms with the requirements of section 101(a) of the Act, or

(2) In the administration of the State plan, there is a failure to comply substantially with any provision of such plan.

(b) *Notification to State agency.* The State agency is notified of the decision.

(c) *Judicial review.* The decision to withhold, suspend, or limit payments described in paragraph (a) of this section may be appealed to the U.S. Court of Appeals for the circuit in which the State is located, in accordance with section 101(d) of the Act.

(d) *Informal discussions.* Hearings described in paragraph (a) of this section are not called until after reasonable effort has been made to resolve the questions involved by conference and discussion with State officials.

(Authority: Secs. 101(c)(1) and 101(d) of the Act; 29 U.S.C. 721(c)(1) and 721(d))

§ 361.5 State agency for administration.

(a) *Designation of sole State agency.* The State plan must designate a State agency as the sole State agency to administer the State plan, or to supervise its administration in a political subdivision of the State by a sole local agency. In the case of American Samoa, the State plan must designate the Governor; in the case of the Trust Territory of the Pacific Islands, the State plan must designate the High Secretary.

(b) *Sole State agency.* The State plan must provide that the sole State agency, except for American Samoa, and the Trust Territory of the Pacific Islands, and except for a sole State agency for the blind as specified in paragraph (c) of this section, must be:

(1) A State agency primarily concerned with vocational rehabilitation, or vocational and other rehabilitation of handicapped individuals. This agency must be an independent State commission, board, or other agency, which has as its major function vocational rehabilitation, or vocational and other rehabilitation of handicapped individuals. The agency must have the authority, subject to the supervision of the Office of Governor, when appropriate, to define the scope of the vocational rehabilitation program within the provision of State and Federal law, and to direct its administration without external administrative controls; or

(2) The State agency administering or supervising the administration of education or vocational education in the State; or

(3) A State agency which includes at least two other major organizational units, each of which administers one or more of the State's major programs of public education, public health, public welfare, or labor.

(c) *Sole State agency for the blind.* Where the State commission for the blind or other agency which provides assistance or services to the blind is authorized under State law to provide vocational rehabilitation services to blind individuals, this agency may be designated as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for the blind or to supervise its administration in a political subdivision of the State by a sole local agency.

(d) *Authority.* The State plan must set forth the legal basis for administration by sole local rehabilitation agencies, if applicable.

(e) *Responsibility for administration.* The State plan must assure that all decisions affecting eligibility for, the nature and scope of available vocational rehabilitation services, and the provision of these services are made by the State agency through its designated State unit, or by a designated vocational rehabilitation unit of a local agency under the supervision of the designated State unit. This responsibility may not be delegated to any other agency or individual.

(Authority: Secs. 101(a)(1) and 101(a)(2) of the Act; 29 U.S.C. 721(a)(1) and 721(a)(2))

§ 361.6 Organization of the State agency.

(a) *Organization.* The State plan must describe the organizational structure of the State agency, including a description of organizational units, the programs and functions assigned to each, and the relationships among these units within the State agency. These descriptions must be accompanied by organizational charts reflecting:

(1) The relationship of the State agency to the Governor and his or her office and to other agencies administering major programs of public education, public health, public welfare, or labor of parallel stature within the State government; and

(2) The internal structure of the State agency and the designated State unit, if applicable. The organizational structure must provide for all the vocational rehabilitation functions for which the State agency is responsible, and for clear lines of administrative and supervisory authority.

(b) *Designated State unit.* Where the designated State agency is of the type specified in § 361.5(b) (2) or (3), or § 361.5(c), the State plan must assure that the agency (or each agency, where two agencies are designated), includes a vocational rehabilitation bureau, division or other organizational unit which:

(1) Is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation of handicapped individuals, and is responsible for the administration of the State agency's vocational rehabilitation program, which includes the determination of eligibility for; the determination of the nature and scope of; and the provision of vocational rehabilitation services under the State plan;

(2) Has a full time director in accordance with § 361.8; and

(3) Has a staff, all or almost all of whom are employed full time on the rehabilitation work of the organizational unit.

(c) *Location of designated State unit.* (1) The State plan must assure that the designated State unit, specified in paragraph (b) of this section, is located at an organizational level and has an organizational status within the State agency comparable to that of other major organizational units of the agency, or in the case of an agency described in § 361.5(b)(2), the unit must be so located and have that status, or the director of the unit must be the executive officer of the State agency.

(2) In the case of a State which has not designated a separate State agency for the blind as provided for in § 361.5 the State may assign responsibility for the part of the plan under which vocational rehabilitation services are provided to blind individuals to one organizational unit of the State agency and may assign responsibility for the rest of the plan to another organizational unit of the agency, with the provisions of paragraphs (b) and (c)(1) of this section applying separately to each of these units.

(Authority: Sec. 101(a)(2) of the Act; 29 U.S.C. 721(a)(2))

§ 361.7 Designation of substitute State vocational rehabilitation agency.

(a) *General Provisions.* (1) If the Secretary has withheld all funding from a State under § 361.4, designate another agency to substitute for the State agency in carrying out the State's program of vocational rehabilitation services. Funds are considered to be withheld when a final administrative decision under § 361.4 is in effect and funds either are not granted to a State agency or are granted to the State agency to enable it to operate the program on a temporary basis pending the orderly transition of responsibility to a substitute agency.

(2) Any public agency or nonprofit organization or agency within the

State or any political subdivision of the State may apply for designation as a substitute agency.

(3) To be eligible for designation as a substitute agency, the applicant must submit a proposal for a substitute State plan which meets the requirements of this part.

(4) The substitute State plan covers a three-year period or the remaining portion of the period covered by the previously approved State plan. The Secretary may not make a grant to a substitute agency until he approve its plan.

(b) *Proposal submittal.* A proposal for submitting a substitute State plan must be in the format required by the Secretary.

(c) *Factors considered in evaluating proposals.* In selecting a substitute agency, the Secretary considers the following factors:

(1) The program and financial capacity of the applicant agency for carrying out a program of vocational rehabilitation services, including the source of funds to be contributed in order to match Federal funds;

(2) The organizational structure of the applicant agency;

(3) The qualifications to be required of the applicant agency staff; and

(4) The extent to which the proposed State vocational rehabilitation service program is comparable to the program which had been carried out under the most recent previously approved State plan in the State.

(d) *Review of proposals.* In selecting a substitute agency, the Secretary evaluates the relative merit of all proposals which are submitted.

(e) *Substitute agency matching share.* The Secretary shall not make any payment to the substitute agency unless it has provided assurances that it will contribute the same proportion of the total amount of funds as the State would have been obligated to contribute if the State agency were carrying out the vocational rehabilitation service program.

(f) *State agency re-designation.* If the State agency changes its State plan or agrees to change its administration of the plan to comply with Federal requirements, the State agency is redesignated as the agency to operate the vocational rehabilitation program. The State agency resumes its operation of the program either at the end of the three-year period for which the substitute State plan has been approved or on any earlier date determined by the Secretary after agreement by the substitute agency and the State agency.

(Authority: Sec. 101(c)(2) of the Act; 29 U.S.C. 721(c)(2))

§ 361.8 State unit director.

The State plan must assure that there will be a full-time director who directs the State agency specified in § 361.5(b)(1) or the designated State unit specified in § 361.6(b).

(Authority: Sec. 101(a)(2)(A) of the Act; 29 U.S.C. 721(a)(2)(A))

§ 361.9 Local administration.

(a) *Scope of written agreement.* The State plan must assure that any local administration of the plan by a sole local agency is based on a written agreement between the local agency and the designated State unit with the concurrence of the State agency which:

(1) Indicates that the local agency will conduct a vocational rehabilitation program through its designated unit under the supervision of the designated State unit in accordance with the State plan and in compliance with Statewide standards established by the designated State unit;

(2) Assures that the designated unit of the local agency will be responsible for carrying out the vocational rehabilitation program and will meet the requirements for this unit specified in § 361.6(b);

(3) Describes the methods to be followed by the designated State unit in its supervision of the local agency's vocational rehabilitation program;

(4) Indicates the basis on which the designated State unit participates financially in its locally administered vocational rehabilitation programs;

(5) Indicates whether the local unit will utilize another local public or nonprofit agency in providing vocational rehabilitation services to handicapped

individuals, and the arrangements to be made; and

(6) Assures that the sole local agency will be responsible through its designated unit for the administration of the vocational rehabilitation program and will employ staff for carrying out the vocational rehabilitation program including a full-time director.

(b) *Responsibility of local agency.* If the State plan provides for local administration, it must assure that the sole local agency is responsible through its designated unit for the administration of the program within the political subdivision which it serves. A separate local agency serving the blind may administer that part of the plan relating to vocational rehabilitation of the blind, under the supervision of the designated State unit for the blind.

(Authority: Sec. 101(a)(1)(A) of the Act; 29 U.S.C. 721(A)(1)(A))

§ 361.10 Methods of administration.

The State plan must assure that the State agency and the designated State unit employ those methods found necessary by the Secretary for the proper and efficient administration of the plan, and for carrying out all functions for which the State is responsible under the plan and this part.

(Authority: Sec. 101(a)(6) of the Act; 29 U.S.C. 721(a)(6))

§ 361.11 Shared funding and administration of special joint projects or programs.

(a) *Procedural requirements.* In order to carry out a special joint project or program to provide services to handicapped individuals, the State unit with the concurrence of the State agency must request the Secretary to authorize it to share funding and administrative responsibility for a joint project or program with another agency or agencies of the State, or with a local agency. The Secretary approves a request for the shared funding and administration of a special joint project or program which he has determined will more effectively accomplish the purpose of the Act and may also waive the provisions of § 361.2(a) that the State plan must be in effect in all political subdivisions of the State.

(b) *Scope of written agreement.* The State plan must assure that each special joint project or program is based on a written agreement which:

(1) Describes the nature and scope of the joint project or program, the services to be provided, the respective roles of each participating agency in the provision of services and in their administration, and the share of the costs to be assumed by each;

(2) Specifies the period of the joint project or program, and plans for anticipated continuation;

(3) Provides a budget showing for each fiscal year the financial participation by the State unit and each participating agency;

(4) Provides written assurance that funds will be legally available for purposes of the joint project or program;

(5) Provides that the State unit shall annually evaluate the effectiveness of each project or program with special attention to its vocational rehabilitation objectives;

(6) Assures that the State unit and each participating agency will furnish information and reports required by the Secretary to determine whether the activities are achieving the purposes of the project or program and warrant continuation; and

(7) Assures that the State unit's portion of the joint project or program will comply with applicable requirements of the Act and this part.

(Authority: Sec. 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

§ 361.12 Waiver of Statewideness.

(a) *Purpose of waiver.* If the State unit desires to carry out activities in one or more political subdivisions through local financing in order to promote the vocational rehabilitation of substantially larger numbers of handicapped individuals with particular types of disabilities, the State plan must identify the types of activities to be carried out in this manner.

(b) *Procedural requirements.* The State plan must assure in these cases that the State unit:

(1) Obtains a written description of any activity to be carried out in a particular political subdivision;

(2) Obtains written assurance from the political subdivision that the non-Federal share of funds is available to the State;

(3) Requires that its approval be given to each proposal before the proposal is put into effect in a political subdivision;

(4) Has sole responsibility for administration (or supervision of locally administered vocational rehabilitation programs if the vocational rehabilitation program is administered by local agencies) of the program in a particular local political subdivision in accordance with § 361.6, except to the extent that funding and administrative responsibility is shared with respect to a joint program under § 361.12.

(5) Assures that all requirements of the State plan apply to these activities, except the requirement that the program be in effect in all political subdivisions of the State, and except that the provisions of § 361.78 may be applicable for Federal financial participation in expenditures for carrying out these activities; and

(6) Furnishes other information and reports required by the Secretary.

(Authority: Sec. 101(a)(4) of the Act; 29 U.S.C. 721(a)(4))

§ 361.13 Cooperative programs involving funds from other public agencies.

(a) *Scope of written agreement.* The State plan must assure that, when the State's share of the cost of a cooperative program for providing or administering vocational rehabilitation services is made available in whole or in part by a State or local public agency other than the designated State unit, the cooperative program is based on a written agreement which:

(1) Describes program goals and the activities to be undertaken to achieve these goals;

(2) Assures only individuals eligible for vocational rehabilitation services will be served;

(3) Assures that the vocational rehabilitation services are not services of the cooperating agency to which the handicapped individual would be entitled if he were not an applicant or client of the designated State unit and represent new services or new patterns of services of the cooperating agency.

(4) Provides for an annual budget;

(5) Provides that expenditures for vocational rehabilitation services and the administration of these services will be under the direct control and at the discretion of the designated State unit.

(6) Assures that the costs of administrative activities are not costs which are attributable to the general expense of the State or locality in carrying out the administrative functions of the State or local government;

(b) *Annual review.* The State unit must review each cooperative program annually to determine its effectiveness and to assure that it is being operated in compliance with the requirements of the written agreement.

(Authority: Sec. 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

§ 361.14 Staffing of the State's vocational rehabilitation program.

(a) *General staffing requirement.* The State plan must assure that staff in sufficient number and with appropriate qualifications is available to carry out all functions required under this part, including program planning and evaluation, staff development, rehabilitation facility development and utilization, medical consultation, and rehabilitation counseling services for severely handicapped individuals.

(b) *Special communication needs staffing.* The State plan must further assure that the designated State unit includes on its staff or makes available personnel able to communicate in the native languages of applicants for service and State unit clients with limited English-speaking ability from ethnic groups which represent substantial segments of the population of the State. The State plan must assure that the State unit includes on its staff or arranges to have available individuals able to communicate with applicants for service and State unit clients individuals who rely on special modes of communication such as manual communication, tactile, oral, and non-verbal communication devices.

(Authority: Sec. 101(a)(7) of the Act; 29 U.S.C. 721(a)(7))

§ 361.15 Affirmative action plan for handicapped individuals.

(a) [Reserved]

(b) The State plan must also assure that the State unit develops and implements a plan to take affirmative action to employ and advance in employment qualified handicapped individuals. This plan must provide for specific action steps, timetables, and complaint and enforcement procedures necessary to assure affirmative action.

(Authority: Secs. 101(a)(6) and 101(a)(7) of the Act; 29 U.S.C. 721(a)(6) and 721(a)(7))

§ 361.16 Staff development.

The State plan must assure that there is a program of staff development for all classes of positions which are involved in the administration and operation of the State's vocational rehabilitation program. The staff development program must include, as a minimum:

(a) A systematic determination of training needs to improve staff effectiveness and a system for evaluating the effectiveness of the training activities provided;

(b) An orientation program for new staff; and

(c) An operating plan for providing training opportunities for all classes of positions consistent with the determination of training needs.

(Authority: Sec. 101(a)(7) of the Act; 29 U.S.C. 721(a)(7))

§ 361.17 State studies and evaluations.

(a) *General provisions.* The State plan must assure that the State unit conducts continuing Statewide studies of the needs of handicapped individuals within the State, including the State's need for rehabilitation facilities, and the methods by which these needs may be most effectively met.

(b) *Scope of Statewide studies.* The continuing Statewide studies must:

(1) Determine the relative needs for vocational rehabilitation services of different significant segments of the population of handicapped individuals, with special reference to the need for expanding services to individuals with the most severe handicaps;

(2) Review a broad variety of means and methods to provide, expand, and improve vocational rehabilitation services in order to determine which means and methods are the most effective;

(3) Review the appropriateness of the criteria used by the designated State unit in determining individuals to be ineligible for vocational rehabilitation services;

(4) Determine the capacity and condition of rehabilitation facilities and rehabilitation facility services within the State and identify ways in which the overall effectiveness of rehabilitation facility services within the State might be improved; and

(5) Otherwise contribute to the orderly and effective development of vocational rehabilitation services and rehabilitation facilities within the State.

(c) *Annual evaluation.* The State plan must assure that the State conducts an evaluation of the effectiveness of the State's vocational rehabilitation program in achieving service goals and priorities, as established in the plan. This evaluation must measure the adequacy of State unit performance in providing vocational rehabilitation services especially to those individuals with the most severe handicaps and must be conducted according to the general standards for evaluation developed by the Secretary. Findings derived from the annual evaluation must be reflected in the State plan, its amendments and in the development of plans and policies for the provision of vocational rehabilitation services either directly by the State unit or within rehabilitation facilities.

(Authority: Secs. 101(a)(15) and (a)(19) of the Act; 29 U.S.C. 721(a)(15) and (a)(19))

§ 361.18 Policy development consultation.

(a) *General provisions.* The State plan must assure that the designated State unit, or as appropriate, the State unit and any vocational rehabilitation unit of a local agency, seeks and takes into account, in connection with matters of general policy development and implementation arising in the administration of the State plan, the views of individuals and groups. Matters of general policy development and implementation include, but need not be limited to, program planning, development and evaluation; development of legislative and budgetary proposals; assessing research and service proposals; and affirmative action for employment of qualified handicapped individuals. The individuals and groups whose opinions are sought and considered are:

(1) Current or former recipients of vocational rehabilitation services, or as appropriate, their parents, guardians, or other representatives;

(2) Providers of vocational rehabilitation services; and

(3) Others active in vocational rehabilitation.

(b) *Public access.* The State plan must further assure that the State unit establishes and maintains a written description of the methods used to obtain and consider views on policy development and implementation. This description must be available to the public for review and inspection, as well as a report of activities which were actually undertaken in this regard during the previous fiscal year.

(Authority: Sec. 101(a)(18) of the Act; 29 U.S.C. 721(a)(18))

§ 361.19 Cooperation with other public agencies.

(a) *General provisions.* The State plan must assure that, where appropriate, the State unit enters into cooperative arrangements or cooperative agreements with, and utilizes the services and facilities of, the State and local agencies administering the State's social services and financial assistance programs; other programs for handicapped individuals such as the State's developmental disabilities program, veterans' programs, health and mental health programs, education programs, including adult education, higher education, special education and vocational education programs, workers' compensation programs, manpower programs and public employment offices; the Social Security Administration; the Office of Workers' Compensation Programs of the Department of Labor, the Veterans' Administration; and other Federal, State and local public agencies providing services related to the rehabilitation of handicapped individuals.

(b) *Coordination with education programs.* The State plan must also assure that specific arrangements or agreements are made for the coordination of services for any individual who is eligible for vocational rehabilitation services and is also eligible for services under Part B of the Education of Handicapped Children Act or the Vocational Education Act.

(c) *Coordination with veterans' programs.* The State plan must also assure that there will be maximum coordination and consultation with programs relating to the rehabilitation of disabled veterans.

(d) *Reciprocal referral services with separate agency for the blind.* Where there is a separate State unit for the blind, the two State units must establish reciprocal referral services, utilize each other's services and facilities to the extent feasible, jointly plan activities to improve services to the handicapped individuals in the State, and otherwise cooperate to provide more effective services.

(Authority: Sec. 101(a)(11) of the Act; 29 U.S.C. 721(a)(11))

§ 361.20 Establishment and maintenance of information and referral resources.

(a) *General provisions.* The State plan must assure the establishment and maintenance of information and referral programs adequate to ensure that handicapped individuals within the State are given accurate information about State vocational rehabilitation services and independent living services, vocational rehabilitation services available from other agencies, organizations, and rehabilitation facilities, and, to the extent possible, other Federal and State services and programs which assist handicapped individuals. The State plan must also assure that the State unit will refer handicapped individuals to other appropriate Federal and State programs which might be of benefit to them. The State plan must further assure that the State unit will utilize existing information and referral systems in the State to the greatest extent possible.

(b) *Special information and referral resources.* The State plan must further assure that, to the greatest extent possible, information and referral services utilize interpreters for the deaf, existing telecommunication systems, specialized media systems for handicapped persons and special materials for blind individuals, deaf individuals, and deaf-blind individuals, as needed.

(Authority: Sec. 101(a)(22) of the Act; 29 U.S.C. 721(a)(22))

§ 361.21 State plan for rehabilitation facilities.

The State plan must assure that the designated State unit maintains a State rehabilitation facilities plan which includes an inventory of rehabilitation facilities and rehabilitation facility services available within the State and a description of the utilization patterns of the facilities and their utilization potential. The inventory must also include a determination of needs for new, expanded or otherwise modified rehabilitation facilities or rehabilitation facility services and a prioritized list of facility projects necessary to achieve short-range State unit goals. The State plan must also assure that the inventory of facilities is developed with the active participation of a representative group of providers and recipients of vocational rehabilitation services and is available to the public for review and inspection.

(Authority: Sec. 101(a)(15) of the Act; 29 U.S.C. 721(a)(15))

§ 361.22 Utilization of rehabilitation facilities.

The State plan must assure that the designated State unit utilizes existing rehabilitation facilities to the maximum extent feasible to provide vocational rehabilitation services to handicapped individuals in accordance with the State plan for rehabilitation facilities under § 361.21. The State plan must describe the methods used to ensure appropriate use of these facilities and must provide for appropriate means for entering into agreements with the operators of these facilities for the provision of vocational rehabilitation services.

(Authority: Secs. 101(a)(12) and (a)(15) of the Act; 29 U.S.C. 721(a)(12) and (a)(15))

§ 361.23 Reports.

The State plan must assure that the State agency or the designated State unit, as appropriate, submits reports in the form and detail and at the time required by the Secretary, including reports required under special evaluation studies. The State agency or the designated State unit, as appropriate must also comply with any requirements necessary to assure the correctness and verification of reports.

(Authority: Sec. 101(a)(10) of the Act; 29 U.S.C. 721(a)(10))

§ 361.24 General administrative and fiscal requirements.

(a) *General provisions.* The State plan must assure that the State agency and the designated State unit adopt policies and methods pertinent to the fiscal administration and control of the vocational rehabilitation program, including sources of funds, incurrence and payment of obligations, disbursements, accounting, and auditing. The State plan must assure that the State agency and the designated State unit maintain accounts and supporting documents necessary for an accurate and expeditious determination at any time of the status of Federal grants, including the disposition of monies received and the nature and amount of charges claimed against these grants.

(b) *Awards made by State agency.* The State plan must assure that the State agency or the designated State unit, as appropriate adopt policies and methods necessary to assure sound administration and control of funds awarded by the State agency or the State unit to any public or other nonprofit agency or organization to carry out a program of vocational rehabilitation services.

(c) *Applicability of 34 CFR Part 74.* The provisions of 34 CFR Part 74 establishing uniform administrative requirements and cost principles, apply to all grants made under this part except for the requirement concerning in-kind contributions under Subpart G of 34 CFR Part 74.

(d) *Applicability of Department of Health and Human Services regulations.* Several Department of Health and Human Services regulations apply under this part. These include:

45 CFR Part 19—Limitations on Payment or Reimbursement for Drugs
45 CFR Part 46—Protection of human subjects
45 CFR Part 75—Informal grant appeals procedures (Indirect cost rates and other cost allocations)

(Authority: Secs. 11 and 12(c) of the Act; 29 U.S.C. 710 and 711(c))

STATE PLAN CONTENT: PROVISION AND SCOPE OF SERVICE

§ 361.30 Processing referrals and applications.

The State plan must assure that the State unit establishes and maintains written standards and procedures to assure expeditious and equitable handling of referrals and applications for vocational rehabilitation services.

(Authority: Secs. 101(a)(60 of the Act; 29 U.S.C. 721(a)(6))

§ 361.31 Eligibility for vocational rehabilitation services.

(a) *General provisions.* (1) The State plan must assure that eligibility requirements are applied by the designated State unit without regard to sex, race, age, creed, color, or national origin of the individual applying for service. The State plan must also assure that no group of individuals is excluded or found ineligible solely on the basis of type of disability. With respect to age, the State plan must assure that no upper or lower age limit is established which will, in and of itself, result in a finding of ineligibility for any handicapped individual who otherwise meets the basic eligibility requirements specified in paragraph (b) of this section.

(2) The State plan must assure that no residence requirement, durational or other, is imposed which excludes from services any individual who is present in the State.

(b) *Basic conditions.* The State plan must assure that eligibility is based only upon:

(1) The presence of a physical or mental disability which for the individual constitutes or results in a substantial handicap to employment; and

(2) A reasonable expectation that vocational rehabilitation services may benefit the individual in terms of employability.

(c) *Interim determination of eligibility.* The State plan may provide for vocational rehabilitation services to be initiated for an individual on the basis of an interim determination of eligibility. If the State chooses this approach, it must identify the criteria established for making an interim determination of eligibility, the procedures to be followed, the services which may be provided, and the period, not to exceed 90 days, during which services may be provided until a final determination of eligibility is made.

(Authority: Secs. 7(7)(A), 12(c), 101(a)(6) and 101(a)(14) of the Act; 29 U.S.C. 706(7)(A), 711(c), 721(a)(6), and 721(a)(14))

§ 361.32 Evaluation of vocational rehabilitation potential: Preliminary diagnostic study.

(a) *Basic conditions.* The State plan must assure that, in order to determine whether any individual is eligible for vocational rehabilitation services, there is a preliminary diagnostic study to determine:

(1) Whether the individual has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

(2) Whether vocational rehabilitation services may reasonably be expected to benefit the individual in terms of employability, or whether an extended evaluation of vocational rehabilitation potential is necessary to make this determination.

(b) *Scope of diagnostic study.* The State plan must assure that the preliminary diagnostic study includes examinations and diagnostic studies to make the determinations specified in paragraph (a) of this section. In all cases, the evaluation places primary emphasis upon determining the individual's potential for achieving a vocational goal.

(c) *Specific evaluations.* The State plan must also assure that the preliminary diagnostic study includes an appraisal of the current general health status of the individual based, to the maximum extent possible, on available medical information. The State plan must further assure that in all cases of mental or emotional disorder, an examination is provided by a physician skilled in the diagnosis and treatment of such disorders, or by a psychologist licensed or certified in accordance with State laws and regulations, in those States where laws and regulations pertaining to the practice of psychology have been established.

(Authority: Secs. 7(5) and 103(a)(1) of the Act; 29 U.S.C. 706(5) and 723(a)(1))

§ 361.33 Evaluation of vocational rehabilitation potential: Thorough diagnostic study.

(a) *General provision.* The State plan must assure that, as appropriate in each case, when an individual's eligibility for vocational rehabilitation services has been determined, there is a thorough diagnostic study to determine the nature and scope of services needed by the individual. This study consists of a comprehensive evaluation of pertinent medical, psychological, vocational, educational, and other factors relating to the individual's handicap to employment and rehabilitation needs.

(b) *Scope of thorough diagnostic study.* The thorough diagnostic study includes in all cases to the degree needed, an appraisal of the individual's personality, intelligence level, educational achievement, work experience, personal, vocational, and social adjustment, employment opportunities, and other pertinent data helpful in determining the nature and scope of services needed. The study also includes, as appropriate for each individual, an appraisal of the individual's patterns of work behavior, ability to acquire occupational skill and capacity for successful job performance.

(Authority: Sec. 7(5) of the Act; 29 U.S.C. 706(5))

§ 361.34 Extended evaluation to determine vocational rehabilitation potential.

(a) *Basic conditions.* The State plan must assure that the furnishing of vocational rehabilitation services under an extended evaluation to determine vocational rehabilitation potential is based only upon:

(1) The presence of a physical or mental disability which for the individual constitutes or results in a substantial handicap to employment; and

(2) An inability to make a determination that vocational rehabilitation services might benefit the individual in terms of employability unless there is an extended evaluation to determine vocational rehabilitation potential.

(b) *Duration and scope of services.* Vocational rehabilitation services necessary for determination of rehabilitation potential, including those provided within a thorough diagnostic study, may be provided to a handicapped individual for a total period not longer than 18 months.

(c) *Other conditions.* (1) The extended evaluation period begins on the date of certification for extended evaluation to determine rehabilitation potential required in § 361.35(b). Only one 18-month maximum period is permitted during the time that the case is open. If a case has been closed because of a determination that the handicapped individual's needs have changed, the case may be re-opened and a subsequent evaluation of vocational rehabilitation potential may be carried out.

(2) Vocational rehabilitation services, authorized after the expiration of the extended evaluation period, are provided only if the certification of eligibility required in § 361.35(a) has been executed by an appropriate State unit staff member.

(d) *Review.* The State plan must assure a thorough assessment of the individual's progress as frequently as necessary but at least once every 90 days during the extended evaluation period. This assessment includes periodic reports from the facility, or person providing the services, to determine the results of the services and to determine whether the individual may be determined to be eligible or ineligible.

(e) *Termination.* The State plan must assure that at any time before the end of an 18-month extended evaluation period, the extended evaluation must be terminated when:

(1) The individual is found eligible for vocational rehabilitation services since there is a reasonable assurance that he or she can be expected to benefit in terms of employability from vocational rehabilitation services; or

(2) The individual is found ineligible for any additional vocational rehabilitation services since it has been determined on the basis of clear evidence that he or she cannot be expected to benefit in terms of employability from vocational rehabilitation services. In this case, the procedures described in § 361.40(d) are to be followed and the individual is referred for services under the State's independent living rehabilitation program under Part 363 of this chapter.

(Authority: Sec. 7(5) of the Act; 29 U.S.C. 706(5))

§ 361.35 Certification: Eligibility; extended evaluation to determine vocational rehabilitation potential; ineligibility.

(a) *Certification of eligibility.* The State plan must assure that, before or at the same time that the State unit accepts a handicapped individual for vocational rehabilitation services, there must be a certification that the individual has met the basic eligibility requirements specified in § 361.31(b). The State plan must further assure that the certification of eligibility is dated and signed by an appropriate State unit staff member.

(b) *Certification for extended evaluation to determine vocational rehabilitation potential.* The State plan must assure that before, and as a basis for providing an extended evaluation to determine vocational rehabilitation potential, there must be a certification that the individual has met the requirements in § 361.34(a). The State plan must further assure that the certification is dated and signed by an appropriate State unit staff member.

(c) *Certification of ineligibility.* (1) The State plan must assure that, whenever the State unit determines on the basis of clear evidence that an applicant or recipient of vocational rehabilitation is ineligible for services, there must be a certification dated and signed by an appropriate designated State unit staff member.

(2) The State plan must further assure that the certification indicates the reasons for the ineligibility determination and is made only after full consultation with the individual or, as appropriate, his or her parent, guardian, or other representative, or after giving a clear opportunity for this consultation. The designated State unit notifies the individual in writing of the action taken and informs the individual of his or her rights and the means by which he or she may express and seek remedy for any dissatisfaction, including the procedures for administrative review and fair hearings under § 361.48. When appropriate, the individual is provided a detailed explanation of the availability of the resources within a client assistance project established under Section 112 of the Act, and referral is made to other agencies and facilities, including when appropriate, the State's independent living rehabilitation program under Part 365.

(d) *Review of ineligibility determination.* The State plan must further assure that when an applicant for vocational rehabilitation services has been determined on the basis of the preliminary diagnostic study to be ineligible because of a finding that he or she cannot be expected to achieve a vocational goal, the ineligiblity determination will be reviewed within 12 months. This review need not be conducted in situations where the individual has refused it, the individual is no longer present in the State, his or her whereabouts are unknown, or his or her medical condition is rapidly progressive or terminal.

(e) *Closure without eligibility determination.* The State plan must provide that the State unit may close a case without any determination of eligibility when an applicant is unavailable during an extended period of time to complete an evaluation of vocational rehabilitation potential and the State unit has made repeated effort to contact the individual and to encourage his or her participation.

(Authority: Secs. 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.36 Order of selection for services.

(a) *General provisions.* The State plan must show the order to be followed in selecting groups of handicapped individuals to be provided vocational rehabilitation services at any time when these services cannot be provided to all eligible individuals.

(b) *Priority for severely handicapped individuals.* The State plan must assure that those groups of individuals with the most severe handicaps are selected for service before any other groups of handicapped individuals.

(c) *Disabled public safety officers.* The State plan must also assure that special consideration will be given to those handicapped individuals whose handicapping condition arose from a disability sustained in the line of duty while performing as public safety officer and the immediate cause of such disability was a criminal act, apparent criminal act, or a hazardous condition resulting directly from the officer's performance of duties in direct connection with the enforcement, execution, and administration of law or fire prevention, firefighting, or related public safety activities.

(Authority: Sec. 101(a)(5)(A) of the Act; 29 U.S.C. 721(a)(5)(A))

§ 361.37 Services to civil employees of the United States.

The State plan must assure that vocational rehabilitation services are available to civil employees of the U.S. Government who are disabled in line of duty, under the same terms and conditions applied to other handicapped individuals.

(Authority: Sec. 101(a)(13)(A) of the Act; U.S.C. 721(a)(13)(A))

§ 361.38 Services to handicapped American Indians.

The State plan must assure that vocational rehabilitation services are provided to handicapped American Indians residing in the State to the same extent that these services are provided to other significant groups of the State's handicapped population. The State plan must further assure that the designated State unit continues to provide vocational rehabilitation services to handicapped American Indians on reservations served by a special tribal program under Section 130 of the Act, if the population estimates used for determining the State's allotment include the population of Indians residing on these reservations.

(Authority: Sec. 101(a)(20) of the Act; 29 U.S.C. 721(a)(20))

§ 361.39 The case record for the individual.

The State plan must assure that the designated State unit maintains for each applicant for, and recipient of, vocational rehabilitation services a case record which includes, to the extent pertinent, the following information:

(a) Documentation concerning the preliminary diagnostic study supporting the determination of eligibility, the need for an extended evaluation of vocational rehabilitation potential, and, as appropriate, documentation concerning the thorough diagnostic study supporting the nature and scope of vocational rehabilitation services to be provided;

(b) In the case of an individual who has applied for vocational rehabilitation services and has been determined to be ineligible, documentation specifying the reasons for the ineligibility determination, and noting a review of the ineligibility determination carried out not later than twelve months after the determination was made;

(c) Documentation supporting any determination that the handicapped individual is a severly handicapped individual;

(d) Documentation as to periodic assessment of the individual during an extended evaluation of vocational rehabilitation potential;

(e) An individualized written rehabilitation program as developed under § 361.40 and § 361.41 and any amendments to the program;

(f) In the event that physical and mental restoration services are provided, documentation supporting the determination that the clinical status of the handicapped individual is stable or slowly progressive unless the individual is being provided an extended evaluation of rehabilitation potential;

(g) Documentation supporting any decision to provide services to family members;

(h) Documentation relating to the participation by the handicapped individual in the cost of any vocational rehabilitation services if the State unit elects to condition the provision of services on the financial need of the individual;

(i) Documentation relating to the eligibility of the individual for any similar benefits, and the use of any similar benefits;

(j) Documentation that the individual has been advised of the confidentiality of all information pertaining to his case, and documentation and other material concerning any information released about the handicapped individual with his or her written consent;

(k) Documentation as to the reason for closing the case including the individual's employment status and, if determined to be rehabilitated, the basis on which the employment was determined to be suitable;

(l) Documentation of any plans to provide post-employment services after the employment objective has been achieved, the basis on which these plans were developed, and a description of the services provided and the outcomes achieved;

(m) Documentation concerning any action and decision involving the handicapped individual's request for an administrative review of agency action or fair hearing under § 361.48; and

(n) In the case of an individual who has been provided vocational rehabilitation services under an individualized written program but who has been determined after the initiation of these services to be no longer capable of achieving a vocational goal, documentation of any reviews of this determination in accordance with § 361.40(d).

(Authority: Secs. 101(a)(6) and 101(a)(9) of the Act; 29 U.S.C. 721(a)(6) and 721(a)(9))

§ 361.40 The individualized written rehabilitation program: Procedures.

(a) *General Provisions.* The State plan must assure that an individualized written rehabilitation program is initiated and periodically updated for each eligible individual and for each individual being provided services under an extended evaluation to determine rehabilitation potential. The State plan must also assure that vocational rehabilitation services are provided in accordance with the written program. The individualized written rehabilitation program must be developed jointly by the designated State unit staff member and the handicapped individual or, as appropriate, his or her parent, guardian or other representative. The State unit must provide a copy of the written program, and any amendments, to the handicapped individual or, as appropriate, his or her parent, guardian, or other representative and must advise each handicapped individual, or his or her representative of all State unit procedures and requirements affecting the development and review of individualized written rehabilitation programs.

(b) *Initiation of program.* The individualized written rehabilitation program must be initiated after certification of eligibility under § 361.35(a)or certification for extended evaluation to determine rehabilitation potential under § 361.35(b).

(c) *Review.* The State must assure that the individualized written program will be reviewed as often as necessary but at least on an annual basis. Each handicapped individual, or, as appropriate, his or her parent, guardian on other representative must be given an opportunity to review the program and, if necessary, jointy redevelop and agree to its terms.

(d) *Review of ineligibility determination.* The State plan must assure that if services are to be terminated under a written program because of a determination that the handicapped individual is not capable of achieving a vocational goal and is therefore no longer eligibile, or if in the case of a handicapped individual who has been provided services under an extended evaluation of vocational rehabilitation potential, services are to be terminated because of a determination that the individual cannot be determined to be eligible, the following conditions and procedures will be met or carried out.

(1) This decision is made only with the full participation of the individual, or, as appropriate, his or her parent, guardian, or other representative, unless the individual has refused to participate, the individual is no longer present in the State or his or her whereabouts are unknown, or his or her medical condition is rapidly progressive or terminal. When the full participation of the individual or a representative of the individual has been secured in making the decision, the views of the individual are recorded in the individualized written rehabilitation program;

(2) The rationale for the ineligibility decision is recorded as an amendment to the individualized written rehabilitation program certifying that the provision of vocational rehabilitation services has demonstrated that the individual is not capable of achieving a vocational goal, and a certification of ineligibility under § 361.35(c) is then executed; and

(3) There will be a periodic review, at least annually, of the ineligibility decision in which the individual is given opportunity for full consultation in the reconsideration of the decision, except in situations where a periodic review would be precluded because the individual has refused services or has refused a periodic review, the individual is no longer present in the State, his or her whereabouts are unknown, or his or her medical condition is rapidly progressive or terminal. The first review of the ineligibility decision is initiated by the State unit. Any subsequent reviews, however, are undertaken at the request of the individual.

(Authority: Sec. 101(a)(9) of the Act; 29 U.S.C. 721(a)(9))

§ 361.41 The individualized written rehabilitation program: Content.

(a) *Scope of content.* The State plan must assure that the individualized written rehabilitation program places primary emphasis on the determination and achievement of a vocational goal, and as appropriate includes, but is not necessarily limited to, statements concerning:

(1) The basis on which the determination of eligibility has been made, or the basis on which a determination has been made that an extended evaluation of vocational rehabilitation potential is necessary to make a determination of eligibility;

(2) The long-range and intermediate rehabilitation objectives established for the individual;

(3) The determination of the specific vocational rehabilitation services to be provided in order to achieve the established rehabilitation objectives;

(4) The projected date for the initiation of each vocational rehabilitation service, and the anticipated duration of each service;

(5) A procedure and schedule for periodic review and evaluation of progress toward achieving rehabilitation objectives based upon objective criteria, and a record of these reviews and evaluations;

(6) The views of the handicapped individual, or, as appropriate, his or her parent, guardian, or other representative, concerning his or her goals and objectives and the vocational rehabilitation services being provided;

(7) The terms and conditions for the provision of vocational rehabilitation services including responsibilities of the handicapped individual in implementing the individualized written rehabilitation program, the extent of client participation in the cost of services if any, the extent to which the individual is eligible for similar benefits under any other programs; and the extent to which these similar benefits have been used;

(8) An assurance that the handicapped individual has been informed of his or her rights and the means by which he or she may express and seek remedy for any dissatisfaction, including the opportunity for an administrative review of State unit action, fair hearing or review by the Secretary under § 361.48;

(9) Where appropriate, assurance that the handicapped individual has been provided a detailed explanation of the availability of the resources within a client assistance project established under Section 112 of the Act;

(10) The basis on which the individual has been determined to be rehabilitated under § 361.43; and

(11) Any plans for the provision of post-employment services after a suitable employment goal has been achieved and the basis on which such plans are developed.

(b) *Coordination with education agencies.* When services are being provided to a handicapped individual who is also eligible for services under the Education for Handicapped Children Act, the individualized written rehabilitation program is prepared in coordination with the appropriate education agency and includes a summary of relevant elements of the individualized education program for that individual.

(Authority: Secs. 101 (a)(9) and (a)(11) of the Act; 29 U.S.C. 721 (a)(9) and (a)(11))

§ 361.42 Scope of State unit program: Vocational rehabilitation services for individuals.

(a) *Scope of services.* The State plan must assure that, as appropriate to the vocational rehabilitation needs of each individual, the following vocational rehabilitation services are available:

(1) Evaluation of vocational rehabilitation potential, including diagnostic and related services incidental to the determination of eligibility for, and the nature and scope of services to be provided;

(2) Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout a handicapped individual's program of services, and referral necessary to help handicapped individuals secure needed services from other agencies;

(3) Physical and mental restoration services, necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive;

(4) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials except that no training or training services in institutions of higher education (universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this part unless maximum efforts have been made by the State unit to secure grant assistance in whole or in part from other sources;

(5) Maintenance, including payments, not exceeding the estimated cost of subsistence and provided at any time after vocational rehabilitation services have begun through the time when postemployment services are being provided. Maintenance covers a handicapped individual's basic living expenses, such as food, shelter, clothing, and other subsistence expenses which are necessary to support and derive the full benefit of the other vocational rehabilitation services being provided;

(6) Transportation, including necessary travel and related expenses including subsistence during travel (or per diem payments in lieu of subsistence) in connection with transporting handicapped individuals and their attendants or escorts for the purpose of supporting and deriving the full benefit of the other vocational rehabilitation services being provided. Transportation may include relocation and moving expenses necessary for achieving a vocational rehabilitation objective;

(7) Services to members of a handicapped individual's family when necessary to the vocational rehabilitation of the handicapped individual;

(8) Interpreter services and note-taking services for the deaf, including tactile interpreting for deaf-blind individuals;

(9) Reader services, rehabilitation teaching services, note-taking services and orientation and mobility services for the blind;

(10) Telecommunications, sensory and other technological aids and devices;

(11) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement and other appropriate public service employment;

(12) Placement in suitable employment;

(13) Post-employment services necessary to maintain suitable employment;

(14) Occupational licenses, including any license, permit or other written authority required by a State, city or other governmental unit to be obtained in order to enter an occupation or enter a small business, tools, equipment, initial stocks (including livestock) and supplies; and

(15) Other goods and services which can reasonably be expected to benefit a handicapped individual in terms of employability.

(b) *Written policies.* The State plan must also assure that the State unit establishes and maintains written policies covering the scope and nature of each of the vocational rehabilitation services specified in paragraph (a) of this section, and the conditions, criteria, and procedures under which each service is provided.

(c) *Special requirements.* In the case of telecommunications, sensory, and other technological aids and devices, the written policies must ensure that individualized prescriptions and fittings are performed only by individuals licensed in accordance with State licensure laws, or by appropriate certified professionals. Any hearing aid recommended on the basis of an evaluation of the auditory system must be fitted in accordance with the specifications of the findings obtained under § 361.33. Newly developed aids and devices not requiring individualized fittings must meet any engineering and safety standards recognized by the Secretary.

(Authority: Secs. 101(a)(6) and 103(a) of the Act; 29 U.S.C. 721(a)(6) and 723(a))

§ 361.43 Individuals determined to be rehabilitated.

(a) *Minimum requirements.* The State plan must assure that an individual determined to be rehabilitated, must have been, as a minimum:

(1) Determined to be eligible under § 361.35(a);

(2) Provided an evaluation of vocational rehabilitation potential, and counseling and guidance as essential vocational rehabilitation services;

(3) Provided appropriate and substantial vocational rehabilitation services in accordance with the individualized written rehabilitation program developed under § 361.40 and § 361.41; and

(4) Determined to have achieved and maintained a suitable employment goal for at least 60 days.

(b) *Post-employment services.* The State plan must also assure that after an individual has been determined to be rehabilitated, the State unit will provide post-employment services when necessary to assist an individual to maintain suitable employment

(Authority: Secs. 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.44 Authorization of services.

The State plan must assure that written authorization is made, either before or at the same time as the purchase of services. Where a State unit employee is permitted to make oral authorization in an emergency situation, there must be prompt documentation and the authorization must be confirmed in writing and forwarded to the provider of the services.

(Authority: Secs. 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.45 Standards for facilities and providers of services.

(a) *General provisions.* The State plan must assure that the designated State unit adopts and maintains written minimum standards for the various types of facilities and providers of services utilized by the State unit in providing vocational rehabilitation services. The State unit must make these standards readily available to unit personnel and to the public.

(b) *Rehabilitation facility standards.* The State unit must establish written standards covering physical plant, equipment, and safety for rehabilitation facilities. For workshops, the State unit must also establish standards applicable to health conditions, wages, hours, working conditions, and worker's compensation or liability insurance for handicapped persons employed in the workshop. These standards must incorporate applicable standards established by the Secretary and must conform with regulations of the Secretary of Labor relating to occupational safety and health standards for rehabilitation facilities. These standards must also assure that all medical and related health services provided in a rehabilitation facility are prescribed by, or under the formal supervision of persons licensed to prescribe or supervise the provision of these services in the State. State unit standards must assure that any rehabilitation facility to be utilized in the provision of vocational rehabilitation services complies with the requirements of the Architectural Barriers Act of 1968 and, the "American Standards Specification for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," No. A117.1-1961, as amended, and its implementing standards 41 CFR Part 101-19.6 et seq.

(c) *Rehabilitation facility personnel and providers of services.* The Secretary exercises no authority concerning the selection, method of selection, tenure of office, or compensation of any individual employed in any facility or personnel utilized in providing service.

(Authority: Secs. 12(c) and 101(a)(7) of the Act; 29 U.S.C. 711(c) and 721(a)(7))

§ 361.46 Rates of payment.

The State plan must assure that the State unit establishes and maintains written policies to govern rates of payment for all purchased vocational rehabilitation services. Any vendor providing services authorized by the State unit must agree not to make any charge to or accept any payment from the handicapped individual or his or her family for the service unless the amount of the charge or payment is previously known and, where applicable, approved by the State unit.

(Authority: Secs. 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6))

§ 361.47 Participation by handicapped individuals in the cost of vocational rehabilitation services.

(a) *Financial need.* (1) There is no Federal requirement that the financial need of a handicapped individual be considered in the provision of any vocational rehabilitation services.

(2) If the State unit chooses to consider the financial need of handicapped individuals for purposes of determining the extent of their participation in the costs of vocational rehabilitation services, the State unit must maintain written policies covering the determination of financial need, and the State plan must specify the types of vocational rehabilitation services for which the unit has established a financial needs test. These policies must be applied uniformly so that equitable treatment is accorded all handicapped individuals in similar circumstances.

(3) The State plan must assure that no financial needs test is applied as a condition for furnishing the following vocational rehabilitation services:

(i) Evaluation of rehabilitation potential, except for those vocational rehabilitation services other than of a diagnostic nature which are provided under an extended evaluation of rehabilitation potential under § 361.34;

(ii) Counseling, guidance, and referral services; and

(iii) Placement.

(b) *Consideration of similar benefits.* (1) The State plan must assure that, in all cases, the State unit gives full consideration to any similar benefits available to a handicapped individual, or to members of a handicapped individual's family, under any program to meet, in whole or in part, the cost of any vocational rehabilitation services except the following:

(i) Evaluation of vocational rehabilitation potential except as provided under paragraph (b)(4) of this section;

(ii) Counseling, guidance and referral;

(iii) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, which are not provided in institutions of higher education (§ 361.42(a)(4));

(iv) Placement; and

(v) Post-employment services consisting of the services listed under paragraphs (b)(1) (i)-(iv) of this section.

(2) The State plan must assure that the designated State unit gives full consideration to any similar benefits available under any other program to a handicapped individual to meet, in whole or in part, the cost of physical and mental restoration services and maintenance unless it would signifi-

cantly delay the provision of services to an individual;

(3) The State plan must also assure that when an individual is eligible for similar benefits, these benefits must be utilized insofar as they are adequate and do not interfere with achieving the rehabilitation objective of the individual.

(4) The State plan must also assure that the State unit gives full consideration to any similar benefits available to a handicapped individual being provided an extended evaluation of vocational rehabilitation potential in a manner consistent with paragraphs (b)(1) through (b)(3) of this section.

(Authority: Secs. 12(c) and 101(a)(8) of the Act; 29 U.S.C. 711(c) and 721(a)(8))

§ 361.48 Appeal procedures.

(a) *Administrative review and fair hearing.* The State plan must assure that when an applicant for vocational rehabilitation services or an individual being provided vocational rehabilitation services is dissatisfied with any action concerning the furnishing or denial of these services, he or she may file a request for an administrative review and a redetermination of that action by the supervisory staff of the designated State unit. The State plan must also provide that an individual, who is dissatisfied with the finding of this administrative review, is given an opportunity for a fair hearing before the State unit director or his designee.

(b) *Additional requirements and procedures in connection with an individualized written rehabilitation program.* (1) When an administrative review and fair hearing have been completed with regard to any decision or determination made in connection with an individualized written rehabilitation program, the final decision made on the basis of the fair hearing must be made in writing by the State unit director. The procedures established by the State unit in this regard must provide that the responsibility for making the final decision may not be delegated to any other officer or employee of the State unit.

(2) When an individual being provided vocational rehabilitation services is dissatisfied with the final decision resulting from the fair hearing under paragraph (a) of this section, the individual may request the Secretary to review the decision. When this request is made, the Secretary or the Secretary's designee reviews the State unit director's decision and makes recommendations to the director concerning action to be taken to resolve the issue and dispose of the matter. Within 60 days of receiving these recommendations, the director advises the handicapped individual and the Secretary of the final disposition of the matter.

(c) *Informing affected individuals.* Each applicant or individual being provided vocational rehabilitation services must be informed of the opportunities available under this section, including the names and addresses of individuals with whom appeals may be filed.

(Authority: Secs. 12(c), 101(a)(6), and 102(d) of the Act; 29 U.S.C. 711(c), 721(a)(6) and 722(d))

§ 361.49 Protection, use and release of personal information.

(a) *General provisions.* The State plan must assure that the State agency and the State unit will adopt and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must assure that:

(1) Specific safeguards protect current and stored personal information;

(2) All applicants, clients, representatives of applicants or clients, and, as appropriate, service providers, cooperating agencies, and interested persons are informed of the confidentiality of personal information and the conditions for accessing and releasing this information;

(3) All applicants or their representatives are informed about the State unit need to collect personal information and the policies governing its use, including:

(i) Identification of the authority under which information is collected;

(ii) Explanation of the principal purposes for which the State unit intends to use or release the information;

(iii) Explanation of whether the individual's providing the information is mandatory or voluntary and the effects of not providing requested information to the State unit;

(iv) Identification of those situations where the State unit requires or does not require informed written consent of the individual before information may be released; and

(v) Identification of other agencies to which information is routinely released.

(4) Persons who are unable to communicate in English or who rely on special modes of communication must be provided explanations about State policies and procedures affecting personal information through methods that can be adequately understood by them;

(5) These policies and procedures must prevail over less stringent State laws and regulations; and

(6) The State agency or the State unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches, and must establish policies and procedures governing access to records.

(b) *State program use.* All personal information in the possession of the State agency or the designated State unit must be used only for purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies which do not have official responsibility for administration of the program. In the administration of the program, the State unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d) and (e) of this section;

(c) *Release to involved individuals.* (1) When requested in writing by the involved individual or his or her representative, the State unit must make all information in the case record accessible to the individual or release it to him or her or a representative in a timely manner. Medical, psychological, or other information which the State unit believes may be harmful to the individual may not be released directly to the individual but must be provided through his or her representative, a physician or a licensed or certified psychologist;

(2) When personal information has been obtained from another agency, or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for handicapped persons, and only if the organization, agency, or individual assures that:

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personal identifying information without the informed written consent of the involved individual, or his or her representative.

(e) *Release to other programs or authorities.* (1) Upon receiving the informed written consent of the individual, the State unit may release to another agency or organization for its program purposes only that personal information which may be released to the involved individual, and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program. Medical or psychological information which the State unit believes may be harmful to the individual may be released when the other agency or organization assures the State unit that the information will be used only for the purpose for which it is being provided and will not be further released to the involved individual;

(2) The State unit must release personal information if required by Federal law;

(3) The State unit must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, (except where expressly prohibited by Federal or State laws or regulations), and in response to judicial order; and

(4) The State unit may also release personal information in order to protect the individual or others when the individual poses a threat to his or her safety or to the safety of others (Sections 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(6)).

(f) *Release to the Secretary or the Secretary's designee.* Where the individual or his or her representative has requested the Secretary to review the final decision of the State Unit Director under § 361.48, the State unit, upon request of the Secretary or the Secretary's designee, will provide to the Secretary or the Secretary's designee a complete and officially certified copy of the case record of the individual, including the record and transcripts of the Fair Hearing decision made by the State Unit Director.

§ 361.50 Scope of State unit program: Management services and supervision for small business enterprises for severely handicapped individuals.

(a) *General provisions.* The State plan may provide for establishing small business enterprises operated by severely handicapped individuals and may also provide for management services and supervision for these enterprises. "Management services and supervision" includes inspection, quality control, consultation, accounting, regulating, in-service training, and related services provided on a systematic basis to support and improve small business enterprises operated by severely handicapped individuals. "Managment services and supervision" does not include those services or costs which pertain to the ongoing operation of the individual business enterprise after the initial establishment period.

(b) *Special policies.* If the State plan provides for management services and supervision, it must assure that the State unit maintains:

(1) A description of the types of small business enterprises to be established;

(2) A description of the policies governing the acquisition of vending facilities or other equipment and initial stocks (including livestock) and supplies for business enterprises;

(3) A description of the policies governing the management and supervision of the program;

(4) A description of how management and supervision will be accomplished either by the State unit or by some other organization as the nominee of the unit subject to its control; and

(5) An assurance that only severely handicapped individuals will be selected to participate in this supervised program.

(c) *Set-aside funds.* If the State unit chooses to set aside funds from the proceeds of the operation of business enterprises, the State plan must also assure that the State unit maintains a description of the methods used in setting aside funds, and the purpose for which funds are set aside. Funds may be used only for small business enterprises program purposes and any benefits for operators must be provided on an equitable basis.

(Authority: Secs. 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.51 Scope of State unit program: Establishment of rehabilitation facilities.

If the State plan provides for the establishment of public or other nonprofit rehabilitation facilities, it must assure that:

(a) The State unit will determine that the need for the establishment of any rehabilitation facility assisted under this section has been demonstrated in the State's inventory of rehabilitation facilities under § 361.21;

(b) Any rehabilitation facility to be established will meet the State unit's standards for rehabilitation facilities maintained under § 361.45;

(c) The primary purpose of any rehabilitation facility to be established is to provide vocational rehabilitation services or transitional or extended employment to handicapped individuals;

(d) Initial or additional staffing assistance will be available only for personnel who are engaged in new or expanded program activities of the rehabilitation facility; and

(e) Any rehabilitation facility established under this part will develop and implement a plan to take afffirmative action to employ and advance in employment qualified handicapped individuals which provides for specific action steps, timetables, and complaint and enforcement procedures.

(Authority: Secs. 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.52 Scope of State unit program: Construction of rehabilitation facilities.

If the State plan provides for the construction of public or other nonprofit rehabilitation facilities, it must assure that:

(a) The State unit will determine that the need for the construction of any rehabilitation facility assisted under this section has been demonstrated in the State's inventory of rehabilitation facilities under § 361.21;

(b) Any rehabilitation facility to be constructed will meet the State unit's standards for rehabilitation facilities maintained under § 361.45;

(c) The primary purpose of any rehabilitation facility to be constructed under this section is to provide vocational rehabilitation services or transitional or extended employment to handicapped individuals;

(d) The total Federal financial participation in the expenditures for the construction of rehabilitation facilities for a fiscal year will not exceed 10 percent of the State's allotment for that year under section 110 of the Act;

(e) For each fiscal year the amount of the State's share of expenditures for vocational rehabilitation services under the plan, other than for the construction of rehabilitation facilities and the establishment of rehabilitation facilities, will be at least equal to the average of its expenditures for the other vocational rehabilitation services for the preceding three fiscal years;

(f) In addition to any other requirement imposed by law, each proposal will be subject to the requirements for the construction of a rehabilitation facility under Title III of the Act and the condition that the applicant will furnish and comply with all assurances set forth in the application; and

(g) Any rehabilitation facility constructed under this part will develop and implement a plan to take affirmative action to employ and advance in employment qualified handicapped individuals which provides for specific action steps, timetables and complaint and enforcement procedures.

(Authority: Secs. 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.53 Scope of State unit program: Facilities and services for groups of handicapped individuals.

The State plan may provide for facilities and services, including services provided at rehabilitation facilities, which may be expected to contribute substantially to the vocational rehabilitation of a group of individuals, but which are not related directly to the individualized rehabilitation program of any one handicapped individual. If the State plan includes these facilities and services, it must assure that the State unit establishes and maintains written policies covering their provision.

(Authority: Secs. 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.54 Scope of State unit program: Telecommunications systems.

The State plan may provide for the use of existing telecommunications systems which have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of handicapped individuals, especially those who are homebound, those who live in rural areas, and those who rely on special modes of communication. These telecommunications systems shall include telephone, television, satellite, tactile-vibratory devices, and similar systems, as appropriate. If the State plan includes these systems, it must assure that the State unit establishes and maintains written policies covering their use.

(Authority: Secs. 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721(a)(6) and 723(b))

§ 361.55 Scope of State unit program; special materials for blind individuals and for deaf individuals.

The State plan may provide for the use of special services available to provide recorded material for blind individuals, captioned television, films or video cassettes for deaf individuals, tactile materials for deaf-blind individuals, and other special materials providing tactile, vibratory, auditory, and visual readout. If the State plan includes these materials, it must assure that the State unit establishes and maintains written policies covering their provision. These policies must ensure that the special communication services are available in the native languages of handicapped individuals from ethnic groups which represent substantial segments of the population of the State.

(Authority: Secs. 101(a)(6) and 103(b) of the Act; 29 U.S.C. 721 (a)(6) and 723(b))

§ 361.56 Utilization of community resources.

The State plan must assure that, in providing vocational rehabilitation services, maximum utilization is made of public or other vocational or technical training facilities or other appropriate community resources.

(Authority: Sec. 101(a)(12)(A) of the Act; 29 U.S.C. 721(a)(12)(A))

§ 361.57 Utilization of profitmaking organizations for on-the-job training in connection with selected projects.

The State plan must assure that the State unit has the authority to enter into contracts with profitmaking organizations for the purpose of providing on-the-job training and related programs for handicapped individuals under Section 621 of the Act (projects with industry) or Section 622 of the Act (business opportunities for handicapped individuals). The State plan must also assure that profitmaking organizations are utilized by the State unit when it has been determined that they are better qualified to provide needed services than nonprofit agencies, organizations, or facilities in the State.

(Authority: Sec. 101(a)(21) of the Act; 29 U.S.C. 721(a)(21))

§ 361.58 Periodic review of extended employment in rehabilitation facilities.

The State plan must assure periodic review and re-evaluation at least annually, of the status of those handicapped individuals who have been placed by the State unit in extended employment in rehabilitation facilities, to determine the feasibility of their employment or their training for future employment in the competitive labor market. The State plan must assure that maximum effort is made to place these individuals in competitive employment or training for competitive employment whenever feasible.

(Authority: Sec. 101(a)(16) of the Act; 29 U.S.C. 721(a)(16))

Subpart C—Financing of State Vocational Rehabilitation Programs

Source: 46 FR 5539, Jan. 19, 1981, unless otherwise noted.

Federal Financial Participation

§ 361.70 Effect of State rules.

Subject to the provisions and limitations of the Act and this part, Federal financial participation is available in expenditures made under the State plan (including the administration thereof) in accordance with applicable State laws, rules, regulations, and standards governing expenditures by State and local agencies.

(Authority: Sec. 111(a) of the Act; 29 U.S.C. 731(a))

§ 361.71 Vocational rehabilitation services to individuals.

(a) Federal financial participation is available in expenditures made under the State plan for providing an evaluation of vocational rehabilitation potential, and for providing specifed vocational rehabilitation services to handicapped individuals as appropriate. Other goods and services not specified under this part and necessary to determine the vocational rehabilitation potential of a handicapped individual or to be of benefit in terms of his or her employability may also be provided. (This may include expenditures for short periods of medical care for acute conditions arising during the course of rehabilitation, which, if not cared for, would constitute a hazard to the evaluation of vocational rehabilitation potential or to the achievement of the rehabilitation objective.)

(b) Federal financial participation may also be available for costs necessary to determine an individual's eligibility to participate in the business opportunity program under Section 622 of the Act and the costs of native healing practitioners who are recognized as such by an Indian tribe when services are being provided to handicapped American Indians under the State plan and when the native healing practitioner services are necessary to achieve a handicapped individual's vocational rehabilitation objective.

(c) Federal financial participation is not available in any expenditure made, either directly or indirectly, for the purchase of any land, or for the purchase or erection of any building (except for a shelter under § 361.72) for any one handicapped individual or for a group of handicapped individuals under § 361.75.

(Authority: Secs. 12(c) and 103(a) of the Act; 29 U.S.C. 711(c) and 723(a))

§ 361.72 Management services and supervision for small business enterprises for serverely handicapped individuals.

(a) Federal financial participation is available in expenditures made under the State plan for the acquisition of equipment, and initial stocks (including livestock) and supplies for small business enterprises (including vending facilities) for severely handicapped individuals, and management services and supervision provided by the State unit to improve the operation of these small business enterprises (including vending facilities). "Equipment" includes shelters, which are those facilities for a business undertaking which are customarily furnished to the operator of a similar business occupying premises under a short-term lease. Federal financial participation is not available in any expenditure for the purchase of any land, nor for the purchase or erection of any building. This exclusion with respect to buildings does not apply to shelters as described in this paragraph.

(b) Federal financial participation is available for expenditures specified under paragraph (a) of this section, which are made from funds set-aside by the State unit from the proceeds of the operation of small business enterprises for the most severely handicapped individuals under its management and supervision.

(Authority: Secs. 12(c) and 103(b) of the Act; 29 U.S.C. 711(c) and 723(b))

§ 361.73 Establishment of rehabilitation facilities.

(a) Federal financial participation is available in expenditures made under the State plan for the establishment of public and other nonprofit rehabilitation facilities for the following types of expenditures, except as limited in paragraph (b) of this section:

(1) Acquisition of existing buildings, and where necessary, the land in connection therewith;

(2) Remodeling and alteration of existing buildings;

(3) Expansion of existing buildings;

(4) Architect's fees;

(5) Site survey and soil investigation;

(6) Initial and additional fixed or movable equipment of existing building;

(7) Initial and additional staffing of rehabilitation facilities; and

(8) Such other direct expenditures as are appropriate to the establishment project.

(b) Federal financial participation is not available in any expenditure:

(1) For the acquisition of an existing building when the Federal share of the cost of acquisition of the building under this section is more than $300,000.

(2) For the rental of land, or rental of buildings in connection with the establishment of rehabilitation facilities;

(3) For the remodeling or alteration of an existing building when the estimated cost of remodeling or alteration exceeds the fair market value of the

building prior to its remodeling or alteration;

(4) For the expansion of an existing building which has not been completed in all respects;

(5) For the expansion of an existing building to the extent that the total size of the resultant expanded building, determined in square footage of usable space, will be greater than twice the size of the original existing building; or

(6) For the expansion of an existing building if the method of joining the expanded portion of the existing building indicates that, in effect, a separate structure is involved.

(c) The amount of Federal financial participation in the establishment of a rehabilitation facility, including initial and additional equipment, and initial and additional staffing for a period not longer than 4 years and 3 months, shall be 80 per cent.

(d) Funds made available to a private nonprofit agency for the establishment of a rehabilitation facility must be expended by that agency in accordance with procedures and standards equivalent to those of the State unit in making direct expenditures for similar purposes.

(Authority: Sec. 7(4), 12 (c) and 103(b) of the Act; 29 U.S.C. 706(4), 711(c), and 723(b))

§ 361.74 Construction of rehabilitation facilities.

(a) Federal financial participation is available in expenditures made under the State plan for the construction of public or other nonprofit rehabilitation facilities for the following types of expenditures:

(1) Acquisition of land in connection with the construction of a rehabilitation facility;

(2) Acquisition of existing buildings;

(3) Remodeling, alteration or renovation of existing buildings;

(4) Construction of new buildings and expansion of existing buildings when the expansion is extensive enough to be tantamount to new construction;

(5) Architect's fees;

(6) Site survey and soil investigation;

(7) Initial fixed or movable equipment of such new, newly acquired, expanded, remodeled, altered or renovated buildings;

(8) Works of art in an amount not to exceed 1 per cent of the total cost of the project; and

(9) Other direct expenditures appropriate to the construction project, except that Federal financial participation is not available for costs of off-site improvements.

(b) The amount of Federal financial participation in the construction of a rehabilitation facility may not be more than 50 percent of the total cost of the project.

(c) Funds made available to a private nonprofit agency for the construction of a rehabilitation facility must be expended by that agency in accordance with procedures and standards equivalent to those of the State unit in making direct expenditures for similar purposes.

(Authority: Secs. 7(1), 12(c), and 103(b) of the Act; 29 U.S.C. 706(1), 711(c) and 723(b))

§ 361.75 Other vocational rehabilitation services for the benefit of groups of handicapped individuals.

Federal financial participation is available in expenditures made under a State plan for the provision of other facilities and services including services provided at rehabilitation facilities which may be expected to contribute substantially to the vocational rehabilitation of a group of handicapped individuals but which are not related directly to the rehabilitation of any one handicapped individual. Federal financial participation is also available in expenditures for the use of existing telecommunications systems and for the use of special materials for blind individuals, deaf individuals and deaf-blind individuals.

(Authority: Secs. 12(c) and 103(b) of the Act; 29 U.S.C. 711(c) and 723(b))

§ 361.76 State and local funds.

For purpose of this part, "State or local funds" means:

(a) Funds made available by appropriation directly to the State or local agency, funds made available by allotment or transfer from any other unit of State or local government, or expenditures made by any unit of State or local government under a cooperative program under § 361.13.

(b) Contributions by private organizations or individuals, which are deposited in the account of the State or local agency in accordance with State law, for expenditure by, and at the sole discretion of, the State or local agency. Contributions earmarked for meeting the State's share for providing particular services, for serving certain types of disabilities, for providing services for special groups identified on the basis of criteria which would be acceptable for the earmarking of public funds, or for carrying on types of administrative activities so identified may be considered to be State funds, if permissible under State law, except that Federal financial participation will not be available in expenditures that revert to the donor's use or facility;

(c) Funds set aside pursuant to § 361.72(b); or

(d) Contributions by private agencies, organizations or individuals deposited in the account of the State or local agency in accordance with State law, which are earmarked, under a condition imposed by the contributor, for meeting (in whole or in part) the State's share for establishing or constructing a particular rehabilitation facility, if permissible under State law. These funds may be used to earn Federal funds only with respect to expenditures for establishing or constructing the particular rehabilitation facility for which the contributions are earmarked.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.77 Shared funding and administration of joint projects or programs.

Where the Secretary approves a request by the State unit to participate in a joint project or program with another agency or agencies of the State, or with a local agency in accordance with § 361.11. Federal financial participation is available in the State unit share of costs for which there is Federal participation under the Act.

(Authority: Secs. 12(c) and 101(a)(1)(A) of the Act; 29 U.S.C. 711(c) and 721(a)(1)(A))

§ 361.78 Waiver of Statewideness.

If the approved State plan provides for activities to be carried out in one or more political subdivisions through local financing (§ 361.12), Federal financial participation is available in expenditures made under the State plan for vocational rehabilitation services and administration in connection with these activities except that funds made available to the State unit by these political subdivisions of the State (including funds contributed to such a subdivision by a private agency, organization or individual) may be earmarked for use within a specific geographical area or for use within a specific facility or for the benefit of a group of individuals with a particular disability. Nothing in this paragraph, however, authorizes the further earmarking of funds for a particular individual or for members of a particular organization, and Federal financial participation is not available in expenditures that revert to the donor's use of facility where the donor is a private agency, organization or individual.

(Authority: Secs. 12(c) and 101(a)(4) of the Act; 29 U.S.C. 711(c) and 721(a)(4))

ALLOTMENT AND PAYMENT

§ 361.85 Allotment of Federal funds for vocational rehabilitation services.

(a) The allotment of the Federal funds for vocational rehabilitation services for each State is computed in accordance with the requirements of section 110 of the Act.

(b) Where the State plan designates separate agencies to administer (or supervise the administration of) the part of the plan under which vocational rehabilitation services are provided for the blind, and the rest of the plan, respectively, the division of the State's allotment is a matter for State determination.

(c) The total Federal financial participation in the expenditures for construction for a fiscal year may not exceed 10 percent of the State's allotment for that year. The amount of the State's share of expenditures for vocational rehabilitation services other than for the establishment of rehabilitation facilities or the construction of rehabilitation facilities must be at least equal to the average of its expenditures for those other vocational rehabilitation services for the preceding 3 fiscal years.

(d) When a special project has been awarded for the provision of vocational rehabilitation services to handicapped American Indians residing on a reservation under Section 130 of the Act, and the State unit does not intend to continue to provide vocational rehabilitation services to these American Indians, the allotment for the State in which the reservation is located is computed by subtracting from the population under paragraph (a) of this section:

(1) 33 percent of the total number of American Indians residing on the reservation to be served in the first full fiscal year during which the special project is in operation;

(2) 66 percent of such American Indians in the second full fiscal year during which the special project is in operation; and

(3) 100 percent of such American Indians in the third full fiscal year during which the special project is in operation.

(Authority: Secs. 12(c), 110, and 130(c) of the Act; 29 U.S.C. 711(c), 730 and 750(d))

§ 361.86 Payments from allotments for vocational rehabilitation services.

(a) Except as provided in § 361.85(c), the Secretary pays to each State an amount computed in accordance with the requirements of Section 111 of the Act. The Federal share for each State is 80 percent (except for the cost of construction of rehabilitation facilities).

(b) Amounts otherwise payable to a State under this section for any fiscal year are reduced by the amount (if any) by which expenditures from non-Federal sources, as specified in § 361.76 (except for expenditures with respect to which the State is entitled to payments under Subpart F of this part) for that fiscal year under the State's approved plan for vocational rehabilitation services are less than expenditures under the plan for the fiscal year ending June 30, 1972. If a reduction in payments for any fiscal year is required in the case of a State where separate agencies administer (or supervise the administration of) the part of the plan under which vocational rehabilitation services are provided for blind individuals, and the rest of the plan, respectively, the reduction is made in direct relation to the amount by which expenditures from non-Federal sources under each part of the plan are less than they were under that part of the plan during the fiscal year ending June 30, 1972.

(Authority: Secs. 12(c) and 111 of the Act; 29 U.S.C. 711(c) and 731)

§ 361.87 Method of computing and making payments.

(a) *Estimates.* Before the beginning of each fiscal quarter or other prescribed period, the Secretary estimates the amount to be paid to each State from its allotment for vocational rehabilitation services under section 110 of the Act, and its allotment for innovation and expansion projects under section 120 of the Act. This estimate is based on records of the State and information furnished by it, and any other investigation found necessary by the Secretary.

(b) *Payments.* The Secretary pays, from the allotment available, the amount estimated for the determined period. In making any payment, additions and subtractions are made as necessary in balancing the Federal-State account for any prior period on the basis of the State's accounting. Payments are made prior to audit or settlement through a Letter of Credit system.

(Authority: Sec. 12(c) and 111 of the Act; 29 U.S.C. 711(c) and 731)

§ 361.88 Refunds.

Any amount refunded or repaid by the State is credited to the Federal account in proportion to the Federal participation in the expenditures by reason of which the refunds or repayments were made. These sums are considered as granted from the State's allotment.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.89 Determining to which fiscal year expenditures are chargeable.

In determining to which Federal fiscal year expenditures are chargeable, States are governed by the following:

(a) Expenditures are chargeable to a particular fiscal year in accordance with State laws or regulations. In the absence of applicable provisions of State laws or regulations, the actual date of the expenditure is controlling;

(b) In the event that a State's fiscal year does not coincide with the Federal fiscal year, appropriate State laws or regulations governing the recording of expenditures govern;

(c) In those States which appropriate funds for a biennium, the principles provided in State laws, regulations and practices for determining to which year of the biennium an expenditure is charged apply.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.90 Audits.

(a) Whenever considered necessary and appropriate, the operations of the State program are audited. These audits are made to determine whether the State program is being operated in a manner that:

(1) Encourages prudent use of program funds; and

(2) Provides a reasonable degree of assurance that funds are being properly expended for the purpose for which appropriated and provided under the Act and the State plan.

(b) Final determination as to action to be taken as a result of an audit is made by the Secretary.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.91 Appeals procedures and expenditures settlement.

The State agency has the right to appeal proposed audit exceptions in which it has not concurred. When expenditures have not been accepted by the Secretary and the State has not made proper restitution, the claim is deducted from subsequent grants made to the State agency.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Subparts D—E—[Reserved]

Subpart F—Grants for Innovation and Expansion of Vocational Rehabilitation Services

SOURCE: 46 FR 5542, Jan. 19, 1981, unless otherwise noted.

§ 361.150 Purpose.

Under section 121(a) of the Act, the Secretary makes grants for the purpose of paying a portion of the cost of planning, preparing for, and initiating special programs under the State plan in order to expand vocational rehabilitation services, including—

(a) Programs to initiate or expand services to individuals with the most severe handicaps;

(b) Special programs to initiate or expand services to classes of handicapped individuals who have unusual or difficult problems in connection with their rehabilitation; or

(c) Programs to maximize the use of technological innovations in meeting the employment training needs of handicapped youth and adults.

(Authority: Sec. 121(a) of the Act; 29 U.S.C. 741(a))

[50 FR 38629, Sept. 23, 1985]

§ 361.151 Special project requirements.

(a) All project activities to be performed under this subpart must either be included within the scope of the approved State plan, or the State plan must be amended to include them.

(b) Grants may be made to a State agency or at the option of the State agency to a public or nonprofit organization or agency.

(c) The approval of the appropriate State agency must be secured before funds may be granted to any organization or agency other than the State agency for the provision of direct services to handicapped individuals or for establishing or maintaining facilities which provide direct services to handicapped individuals.

(d) Written program descriptions of activities to be conducted under grants under this subpart, including a budget, must be submitted in detail and according to the procedures required by the Secretary.

(e) Federal financial participation in the cost of any project uder this subpart is not available for any period longer than 36 months.

(f) The construction of a rehabilitation facility may not be undertaken unless it has been demonstrated to be essential to carrying out a project for providing services under this subpart. In addition, the need for the facility must have been demonstrated in the State's inventory of rehabilitation facilities under § 361.23.

(g) Grants may not be made solely for the purpose of planning or determining the feasibility of initiating a vocational rehabilitation service program.

(h) In order to receive assistance, a public or other nonprofit organization or agency, including a public or other nonprofit rehabilitation facility, must develop and implement an affirmative action plan for equal employment opportunity and advancement opportunity for qualified handicapped individuals. The affirmative action plan must provide for specific action steps, time tables, and complaint and enforcement procedures.

(Authority: Secs. 12(c), 121(a) and 121(b) of the Act; 29 U.S.C. 711(c), 741(a) and 741(b))

§ 361.152 Allotment of Federal funds.

(a) The allotment and any reallotment of Federal funds under this subpart is computed in accordance with the requirements of section 120 of the Act.

(b) If at any time after the start of any fiscal year, or after a review after May 1 of that fiscal year, the Secretary determines that any amount will not be utilized by a State in carrying out the purpose of this subpart, he makes that amount available to one or more other States which he determines will be able to use additional amounts during the fiscal year. Any amount made available to any State under this paragraph of this section is regarded as an increase in the State's allotment for the year.

(c) Where the State plan designates separate agencies to administer (or supervise the administration of) the part of the plan under which vocational rehabilitation services are provided for the blind, and the rest of the plan, respectively, the division of the State's allotment is a matter for State determination.

(d) Within each State's allotment, the Secretary may require that up to 50 percent of available funds must be expended in connection with projects which he has first approved. If the Secretary so requires, he notifies the States of any established program priorities at least 90 days prior to the beginning of each fiscal year.

(Authority: Secs. 12(c), 120 and 121 of the Act; 29 U.S.C. 711(c), 740 and 741)

§ 361.153 Payments from allotments.

From the sums allotted under § 361.152, the Secretary pays to each State for any project approved under this subpart, an amount up to 90 percent of the costs of the project, (except for a project for construction of a rehabilitation facility where the amount is no more than 50 percent of the total cost of the project) consistent with annual instructions or program guidelines. The amount of Federal financial participation in the costs of construction of a rehabilitation facility is the same percentage specified in § 361.74(b).

(Authority: Secs. 7(6) and 121(b) of the Act; 29 U.S.C. 706(6) and 741(b))

§ 361.154 Methods of computing and making payments.

Computing and making payments are done in accordance with § 361.87. The provisions of § 361.88 through § 361.91 also apply.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 361.155 Reports.

A grantee must submit reports required by the Secretary and must comply with any requirements necessary to assure the correctness and verification of these reports. These reports include an annual report of program accomplishments reflecting the extent to which programs of vocational rehabilitation services have been initiated or expanded for severely handicapped individuals or for other individuals who have unusual and difficult problems in connection with their rehabilitation.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Subpart G—Procedures for Hearings on State Plan Conformity and Compliance

SOURCE: 46 FR 5543, Jan. 19, 1981, unless otherwise noted.

§ 361.170 General provisions.

(a) *Scope.* These hearing procedures apply to notice and opportunity for a hearing on:

(1) Disapproval of a State plan or amendment; and

(2) Determination that the State agency has failed in the administration of its approved plan to comply substantially with the provisions of its plan.

(b) *Negotiations.* Nothing in this subpart limits negotiations between the Rehabilitation Services Administration and the State. Negotiations on hearing issues are not part of the hearing and are not subject to the rules in this subpart.

(c) *How to get records.* Papers filed in connection with a hearing may be inspected and copied in the office of the Rehabilitation Services Administration Hearing Clerk. Individuals may direct inquiries to the Rehabilitation Services Administration Hearing Clerk, Department of Education, 330 C Street SW., Washington, D.C. 20201.

(d) *How to file and serve papers.* (1) Anyone who wishes to submit papers for the docket shall file with the Rehabilitation Services Administration Hearing Clerk an original and two copies except that only originals of exhibits and testimony transcripts need be filed.

(2) Anyone who wishes papers to be part of the record shall also serve copies on the parties by personal delivery or by mail, and file proof of this service with the Rehabilitation Services Administration Hearing Clerk. Service on a party's designated attorney is the same as service on the party.

(e) *When rules are suspended.* After notifying the parties, the Secretary or the individual designated as presiding officer may modify or waive any rule in this subpart if it is decided that the action is equitable and will not unduly prejudice the rights of any party.

(Authority: Secs. 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.171 How to request a hearing.

(a) *Time limit.* A State agency has 60 days from receipt of the Secretary's written notice of proposed disapproval of a State plan or plan amendment, or intended compliance action to request a hearing. The agency shall make its request in writing to the Secretary.

(b) *What happens if a State agency does not request a hearing.* If the State agency does not request a hearing within the time allowed by paragraph (a) of this section, the Secretary makes a final determination and notifies the agency by letter of the decision to withhold either all further payments under the plan or only payments for those portions of the plan affected.

(c) *How request is acknowledged*—(1) *Notice of hearing.* Within 30 days of receiving a hearing request, the Secretary notifies the State agency in writing of the date, time, and place of the hearing and of the issues to be considered. The Secretary publishes the hearing notice in the FEDERAL REGISTER. The hearing will be held in a setting with accommodations necessary to make it free from architectural, communication and other barriers to the participation of handicapped persons.

(2) *When a hearing is held.* The date set for a hearing is 20 to 60 days from the date the State agency receives the hearing notice. However, the State agency and the presiding officer may agree in writing to a different date.

(Authority: Secs. 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 21(b) and 721(c))

§ 361.172 Hearing issues.

(a) *What the hearing issues are.* The issues at a hearing are those included in the Secretary's notice to the State agency.

(b) *How the Secretary may add issues.* At least 20 days before a hearing, the Secretary notifies the agency by letter of any additional issues to be considered. The Secretary publishes this notice in the FEDERAL REGISTER. If the agency does not receive its notice of additional issues in the required time, any party may request that the presiding officer postpone the hearing. If a request is made, the presiding officer sets a new hearing date that is 20 to 60 days from the date the agency received the notice of additional issues.

(c) *How actions by the State may cause the Secretary to add, modify, or remove issues.* The Secretary may add, modify, or remove issues if the State agency:

(1) Conforms its plan to Federal requirements; or

(2) Changes its practices or organization to comply with its approved State plan.

(d) *What happens if State action causes the Secretary to add, modify, or remove issues.* (1) If the Secretary specifies new or modified issues, the hearing proceeds on these issues.

(2) (i) If the Secretary removes an issue, the hearing proceeds on the remaining issues. If the Secretary removes all issues, the Secretary terminates the hearing proceedings. The Secretary may terminate hearing proceedings or remove issues before, during, or after the hearing.

(ii) Before removing an issue, the Secretary notifies the parties other than the Rehabilitation Services Administration and the State agency of the issue and the reasons for removing the issue. Within 20 days of the date of this notice, the parties may submit comments in writing on the merits of the proposed removal. The Secretary considers these comments and they become part of the record.

(Authority: Secs. 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.173 What the purpose of a hearing is.

The purpose of the hearing is to receive factual evidence and testimony, including expert opinion testimony, related to the issues. The presiding officer may not allow argument as evidence.

(Authority: Secs. 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.174 Who presides.

The presiding officer at a hearing is the Secretary or a person the Secretary designates. If the Secretary designates a presiding officer, the Secretary sends copies of the designation notice to the parties.

(Authority: Secs. 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.175 How to be a party or an amicus curiae to a hearing.

(a) *Rehabilitation Services Administration and State agency.* The Rehabilitation Services Administration and the State agency are parties to a hearing without having to request participation.

(b) *Other parties or amicus curiae.* An individual or group wishing to be a party or amicus curiae to a hearing may file a petition with the Rehabilitation Services Administration Hearing Clerk no more than 15 days following publication of the hearing notice in the FEDERAL REGISTER. A petitioner who wishes to be a party must also provide a copy of the petition to each party of record at that time.

(c) *What must be in a petition.* A petition must state concisely: (1) Whether the petitioner wishes to be a party or an amicus curiae;

(2) The petitioner's interest in the proceedings;

(3) Who will appear for the petitioner;

(4) The issues on which the petitioner wishes to participate; and

(5) Whether the petitioner intends to present witnesses, if the petitioner wishes to be a party.

(Authority: Secs. 12(c), 101(b) and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.176 What happens to a petition.

(a) *Petitions to be a party.* (1) The presiding officer determines if the issues to be considered at the hearing have caused the petitioner injury and if the petitioner's interest is within the zone of interest protected by the governing Federal statute. The presiding officer permits or denies the petition accordingly and promptly sends the petitioner a written notice of the decision. If the presiding officer denies the petition, the officer states the reasons in the notice.

(2) Before making this determination, the presiding officer will allow any party to file comments on the petition to be a party. Any party who wishes to file comments must do so within 5 days of receiving the petition.

(3) If the presiding officer decides that parties by petition have common interest, the officer may require that they designate a single representative, or may recognize two or more of these parties to represent all of them.

(b) *Petitions to be amicus curiae.* The presiding officer determines if the petitioner has a legitimate interest in the proceedings and may contribute materially to the proper settlement of the issues. The officer also determines if the petitioners' participation would unduly delay the proceedings. The presiding officer permits or denies the petition accordingly and promptly sends the petitioner a written notice of the decision. If the presiding officer denies the petition, the officer states the reason in this notice.

(Authority: Secs. 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.177 Rights of parties and amicus curiae.

(a) *What rights parties have.* A party may:

(1) Appear by counsel or other authorized representative in all hearing proceedings;

(2) Participate in any prehearing conference held by the presiding officer;

(3) Stipulate facts that, if uncontested, become part of the record;

(4) Make opening statements;

(5) Present relevant evidence;

(6) Present witnesses who must be available for cross-examination;

(7) Present oral arguments at the hearing; and

(8) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

(b) *What rights an amicus curiae has.* An amicus curiae may:

(1) Present an oral statement at the hearing at the time specified by the presiding officer;

(2) Submit a written statement of position to the presiding officer before the hearing begins; and

(3) Submit a brief or written statement at the same time the parties submit briefs

If the amicus curiae submits a written statement or brief, the amicus shall serve a copy on each party.

(Authority: Secs. 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.178 Authority of presiding officer.

(a) *General rule.* The presiding officer conducts a fair hearing, avoids delay, maintains order and makes a record of the proceedings. In so doing, he or she has authority that includes:

(1) Regulating the course of the hearing;

(2) Regulating the participation and conduct of parties, amici curiae, and others at the hearing;

(3) Ruling on procedural matters and, if necessary, issuing protective orders or other relief to a party against whom discovery is sought;

(4) Taking any action authorized by the rules in this subpart;

(5) Making a final decision, if the Secretary is the presiding officer;

(6) Administering oaths and affirmations;

(7) Examining witnesses;

(8) Receiving or excluding evidence; and

(9) Ruling on or limiting evidence or discovery.

(b) *What the presiding officer may not do.* The presiding officer may not compel by subpoena the production of witnesses, papers, or other evidence.

(c) *When the presiding officer's authority is limited.* If the presiding officer is not the Secretary, the officer certifies the entire record to the Secretary, including a recommended decision on each issue in the hearing, but may not make a final decision.

(Authority: Secs. 12(c), 101(b), 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.179 Discovery.

A party has the right to conduct discovery against other parties. These discovery proceedings are subject to Rules 26-37, Federal Rules of Civil Procedure. The presiding officer promptly rules on any written objection to discovery and may restrict or control discovery to prevent undue delay in the hearing. If a party fails to respond to discovery procedures, the presiding officer may issue any order and impose any sanction (other than contempt orders) authorized by Rule 37 of the Federal Rules of Civil Procedure.

(Authority: Secs. 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b) and 721(c))

§ 361.180 How evidence is handled.

(a) *Testimony.* Witnesses, under oath or affirmation, give oral testimony at a hearing. Witnesses must be available at a hearing for cross-examination by the parties.

(b) *Rules of evidence.* Technical rules of evidence do not apply to hearings described in this subpart. The presiding officer applies any rules or principles necessary to ensure disclosure of the most credible evidence available and to subject testimony to cross-examination. Cross-examination may be on any material matter, regardless of the scope of direct examination.

(Authority: Secs. 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.181 What happens to unsponsored written material.

Letters and other written material regarding matters at issue, if not submitted specifically on behalf of a party, become part of the correspondence section of the docket. This material is not part of the evidence or the record.

(Authority: Secs. 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.182 What the record is.

(a) *Official transcript.* The Rehabilitation Services Administration designates the official reporter for a hearing. The Rehabilitation Services Administration Hearing Clerk has the official transcript of testimony, and other material submitted with the official transcript. The parties and the public may obtain transcripts of testimony from the official reporter at rates that do not exceed the maximum fixed by contract between the reporter and the Rehabilitation Services Administration. Upon notice to the parties, the presiding officer may authorize transcript corrections that involve matters of substance.

(b) *Record.* The record for the hearing decision is the transcript of testimony, exhibits, and all other papers and requests filed in the proceedings except for the correspondence section of the docket. The record includes rulings and any recommended decision.

(Authority: Secs. 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.183 Posthearing briefs.

The presiding officer fixes the time for filing posthearing briefs. They may contain proposed findings of fact and conclusions of law. The presiding officer may permit filing of reply briefs.

(Authority: Secs. 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.184 Decisions.

(a) *If the Secretary is the presiding officer.* If the Commission is the presiding officer, the Secretary issues a final decision 60 days after the time allowed for filing posthearing or reply briefs ends. The Secretary provides copies of the decision to all parties and any amici curiae.

(b) *If the Secretary appoints a presiding officer.* (1) No later than 30 days after the time for filing posthearings or reply briefs ends, the presiding officer certifies the entire record, including his or her recommended decision, to the Secretary.

(2) The Secretary provides a copy of the recommended decision to the parties and any amici curiae. Within 20 days, a party may file with the Secretary, exceptions to the recommended decision. The party must file a supporting brief or statement with the exception.

(3) The Secretary reviews the record, and, within 60 days of the date of receipt of the presiding officer's recom-

mended decision, the Secretary issues a final decision. The Secretary provides copies of the decision to all parties and any amici curiae.

(c) If the Secretary decides, after a hearing, that the plan or plan amendment is not approvable, or substantial noncompliance exists, the final decision indicates whether RSA will withhold all further payments or only payments under portions of the plan affected.

(Authority: Secs. 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.185 When a decision is effective.

(a) The Secretary's decision, which constitutes "final agency action" within the meaning of 5 U.S.C. 704 and a final determination under section 101(b) and (c)(1) of the Act, specifies the effective date for RSA's reduction or withholding of the State's grant. This effective date may not be earlier than the date of the Secretary's decision or later than the first day of the next calendar quarter.

(b) The decision remains in effect unless reversed or stayed on judicial appeal, or until the plan or State agency administration of the plan meets all Federal requirements, except that the Secretary may modify or set aside his or her decision before the record of the proceedings under this subpart is filed in court.

(Authority: Secs. 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

§ 361.186 How the State may appeal.

A State may appeal to the U.S. Court of Appeals which has jurisdiction in the State, the final decision of the Secretary disapproving the State plan or plan amendment or finding noncompliance. The State must file the appeal within 30 days after receiving the Secretary's final decision.

(Authority: Secs. 12(c), 101(b), and 101(c) of the Act; 29 U.S.C. 711(c), 721(b), and 721(c))

PART 362—PROJECT GRANTS AND OTHER ASSISTANCE IN VOCATIONAL REHABILITATION

Subpart A—[Reserved]

Subpart B—Projects for the Provision of Vocational Rehabilitation Services

Sec.
362.41 Special projects and demonstrations; new approaches to service delivery; making recreational activities accessible to the handicapped.
362.44 Projects for vocational training services.

Subpart C—Assistance for Rehabilitation Facilities

362.50 Project development grants.
362.51 Grants for construction of rehabilitation facilities.
362.52 Initial staffing grants.
362.53 Rehabilitation facility improvement grants.

Subparts D—G—[Reserved]

Subpart H—Technical Assistance

362.100 Furnishing of technical assistance.
362.101 Per diem payments.
362.102 Recommendations and reports.

AUTHORITY: Sec. 400(b), 87 Stat. 386 (29 U.S.C. 780(b)).

SOURCE: 40 FR 54718, Nov. 25, 1975, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

Subpart A—[Reserved]

Subpart B—Projects for the Provision of Vocational Rehabilitation Services

§ 362.41 Special projects and demonstrations; new approaches to service delivery; making recreational activities accessible to the handicapped.

(a) *Purpose.* Under section 304(b)(2) of the Act, grants may be made for the purpose of paying all or part of the cost of special projects and demonstrations, and research and evaluation in connection with such special projects and demonstrations, for applying new types or patterns of services or devices, including opportunities for new careers for handicapped individuals or other individuals in programs serving handicapped individuals. Under section 304(b)(3) of the Act, grants may be made for the purpose of paying all or part of the cost of special projects and demonstations, and research and evaluation in connection with such special projects and demonstrations, for operating programs (including renovation and construction of facilities, where appropriate) to demonstrate methods of making recreational activities fully accessible to handicapped individuals.

(b) *Eligible applicants.* Applications may be made by States and public and other nonprofit agencies and organizations.

(c) *Matching requirements.* Grants may be made for paying all or part of the costs of activities covered under this section. Where part of the costs is to be borne by the grantee, the amount of grantee participation will be determined at the time of the grant award and will generally be not less than 10 per centum of the total cost of the project. In projects and demonstrations providing new career opportunities, grantees will be expected to assume an increasing percentage of the new careerist expenses in order to assure that employment commitments will be met.

(d) *Federal financial participation.* Federal financial participation may be available for costs specified in § 362.8 and may also be available for:

(1) New careerist salary and training expenses;

(2) Necessary supportive services to enable new careerists to secure employment; and

(3) In the case of a project which involves the renovation of construction of facilities, such costs as are specified in § 362.51(d).

(e) *Project period.* A project may be approved for a project period not to exceed 3 years.

(f) *Evaluative component.* All projects and demonstrations supported under this section shall contain an evaluative component which shall measure program effectiveness.

(g) *Selection of handicapped individuals to participate in a project.* Handicapped individuals to be provided new career opportunities and supportive services under this section will be only those individuals who have been determined by the State agency to be handicapped individuals under § 361.1(k) of this chapter.

(h) *Special considerations in projects and demonstrations providing new career opportunities.* Applicants will provide assurance that the occupations for which training is being provided offer possibilities for continuing full-time employment and realizable opportunity for promotion and advancement through structured channels of promotion.

(i) *Special consideration in projects and demonstrations for making recreational activities accessible to the handicapped.* Approved projects to demonstrate methods of making recreational activities fully accessible to handicapped individuals shall include provisions to:

(1) Ensure conformance with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," No. A117.1-1961, as modified by other standards prescribed by the Secretary of Housing and Urban Development (24 CFR, Part 40) or the Administrator of General Services (41 CFR 101-17.703) and any other standards established by the Secretary, with the advice of the Architectural and Transportation Barriers Compliance Board, relating to the removal of architectural or transportation barriers;

(2) Focus on as broad a range of recreational activities as is appropriate to the geographical area, including indoor and outdoor recreational activities and recreational activities related to the fine arts;

(3) Ensure in those projects in which renovation or construction of facilities is involved, that such renovation or construction shall conform with all requirements specified under § 362.51(d)-(g) of this part.

§ 362.44 Projects for vocational training services.

(a) *Terms.* For purposes of this section—

(1) "Training in occupational skills" means a planned and systematic sequence of instruction under competent supervision which is designed to

impart predetermined skills and knowledge with respect to a specific occupational objective or a job family, and to assist the individual to adjust to a work environment through the development of appropriate patterns of behavior.

(2) "Work evaluation" means the appraisal of the individual's capacity:

(i) To adjust to a work environment;

(ii) To acquire occupational skills; and

(iii) To attain appropriate vocational goals.

(3) "Work testing" means the utilization of work, simulated or real, to assess the individual's productive, physical, and psychological capacity to adapt to a work environment.

(4) "Job tryouts" means work experience, within a rehabilitation facility or in conjunction with outside industry or other community resources to assist the individual to acquire knowledge and develop skills; and to assess his readiness for job placement or fitness to engage in a specific occupation.

(5) "Vocational training services" includes:

(i) Training with a view toward career advancement;

(ii) Training in occupational skills;

(iii) Related services including work evaluation, work testing, provision of occupational tools and equipment required by the individual to engage in such training, and job tryouts, and

(iv) Payment of weekly training allowances to individuals receiving such training and related services.

(b) *Purpose.* Under section 302(b) of the Act, grants may be made to pay part of the cost of projects for providing vocational training services, leading to maximum employability, to handicapped individuals, especially the most severely handicapped, in public or other nonprofit rehabilitation facilities.

(c) *Eligible applicants.* Applications may be made by States and public and nonprofit organizations and agencies. The rehabilitation facility to be involved in the provision of vocational training services, shall:

(1) Be a public or nonprofit rehabilitation facility;

(2) Have been in operation at least 1 year;

(3) Provide training courses in occupational skills (with the major portion of each course being provided within the rehabilitation facility) and related services including work evaluation, work testing, and job tryouts and the major portion of each of these items with the exception of job tryouts, will be provided within the rehabilitation facility;

(4) Meet occupational health and safety standards prescribed by regulations of the Secretary of Labor;

(5) Substantially meet any standards for rehabilitation facilities established by the Secretary; and

(6) Prepare trainees for gainful employment.

(d) *Matching requirements.* The Federal share shall not exceed 90 per centum of the total cost of the project.

(e) *Federal financial participation.* Federal financial participation may be available for costs specified in § 362.8 and may also be available for the costs of weekly training allowances.

(f) *Project period.* A project may be approved for a project period not to exceed 3 years.

(g) *Assurances from applicant.* In addition to any other requirement imposed under the Act, each grant is subject to the condition that the applicant will furnish assurances that:

(1) Weekly training allowances will not reduce, but will supplement, any wages or other remuneration due to a trainee, and the amount of the payment for the weekly training allowance will be identified and disbursed separately from any payment representing wages or other remuneration due to a trainee;

(2) No trainee will remain in training when it is determined that he is no longer making progress (as indicated by regular training progress reports) toward the completion of his training program or the development of a capability for maximum employability, or in any event for more than 2 years;

(3) In the event any portion of the vocational training services is performed outside the designated rehabilitation facility, the applicant will retain responsibility for the quality of such services; and

(4) The full range of vocational training services will be made available

to each trainee to the extent of his need for such services.

(h) *Selection of individuals to participate in a project.* The individuals to receive vocational training services under a project will include only individuals who have been certified as eligible pursuant to § 1361.1(f) of this chapter and have been determined, by the appropriate State agency to be suitable for and in need of such vocational training services. The most severely handicapped individuals shall be selected for participation in a project prior to other handicapped individuals.

(i) *Weekly training allowances.* (1) A weekly training allowance shall be available to each trainee, except that such allowance shall not be paid for any period in excess of 2 years and for any week shall not exceed $30 plus $10 for each dependent, or $70, whichever is less. Dependents shall be included when their relationship to the trainee is that of spouse, parent, child under the age of 21 (including an adopted child or stepchild), or handicapped child whose dependency is related to the handicap, and who are living in the same home with the trainee.

(2) The amount of the weekly training allowance shall be determined in accordance with paragraphs (j) and (k) of this section. The adjusted weekly training allowance available to a trainee shall not be less than $10 per week. To the extent that the weekly training allowance is paid for dependents, the amount shall be $10 per week for each dependent.

(3) The State agency shall make final determination, after consultation with the project facility and in accordance with the training services plan, with respect to the amount of the weekly training allowance and any adjustment to be made in the amount of the allowance.

(j) *Factors considered in determining the amount of weekly training allowances.* In determining the amount of such allowance the following factors shall be considered.

(1) The extent of the need for the allowance including any expenses reasonably attributable to receipt of training services;

(2) The extent to which the allowance will help ensure entry into and satisfactory completion of training; and

(3) The extent to which the allowance will motivate the trainee to achieve a better standard of living.

(k) *Factors considered in adjustment of weekly training allowances.* (1) Adjustment in the weekly training allowance may be made at any time during the individual's training period and the amount of the allowance shall be reviewed periodically. The project facility may propose the adjustment, but the final determination shall be made by the State agency.

(2) In considering whether adjustment is appropriate the following factors will be considered:

(i) Whether the trainee is earning a wage;

(ii) The relationship of the amount of wages, if any, to the amount of the allowance;

(iii) Any other material change in the economic condition of the individual or his family; and

(iv) The effect of any adjustment on the incentive of the trainee.

Subpart C—Assistance for Rehabilitation Facilities

§ 362.50 Project development grants.

(a) *Purpose.* Under section 301(d) of the Act, grants may be made for the purpose of assisting in meeting the costs of planning the development and construction of a specific rehabilitation facility and the services to be provided by such a rehabilitation facility.

(b) *Eligible applicants.* Applications may be made by public or other nonprofit agencies, institutions, or organizations which are either operating or are studying the feasibility of operating a rehabilitation facility.

(c) *Matching requirements.* The Federal share shall not exceed 90 per centum of the total cost of the project.

(d) *Federal financial participation.* Federal financial participation may be available for costs specified in § 362.8 and may also be available for

(1) Expenses associated with the use of volunteers; and

(2) Such architectural plannings as is incidental to program planning, but not including working drawings.

(e) *Project period.* A project may be approved for a project period of not more than 12 months.

§ 362.51 Grants for construction of rehabilitation facilities.

(a) *Purpose.* Under section 301(b) of the Act, grants may be made to assist in meeting the costs of construction of public or other nonprofit rehabilitation facilities. Construction of a rehabilitation facility may, where necessary to the effective operation of the facility, include the construction of residential accommodations for use in connection with the rehabilitation of handicapped individuals.

(b) *Eligible applicants.* Applications may be made by State vocational rehabilitation agencies or other public or nonprofit organizations or agencies which operate or propose to operate a public or other nonprofit rehabilitation facility.

(c) *Matching requirements.* The amount of a grant with respect to any construction project shall be equal to the same percentage of the cost of the project as the Federal share which would be applicable in the case of a rehabilitation facility (as defined in section 645(g) of the Public Health Service Act, 42 U.S.C. 291(a)), in the same location.

(d) *Federal financial participation.*

(1) Federal financial participation may be available for

(i) Acquisition of land in connection with construction of a rehabilitation facility;

(ii) Acquisition of existing buildings;

(iii) Remodeling, alteration, renovation, or expansion of existing buildings;

(iv) Construction of new buildings;

(v) Architect's fees;

(vi) Site survey and soil investigation;

(vii) Fixed or movable equipment;

(viii) Works of art in an amount not to exceed 1 per centum of the total cost of the project; and

(ix) Other costs specifically approved in the application.

(2) Federal financial participation will not be available for the costs of offsite improvements or for the construction of any rehabilitation facility which is or will be used for religious worship or any sectarian activity.

(e) *Project period.* Grants shall be awarded for a project period necessary for the completion of the approved construction project except, however, that any project in which the construction has not begun during the 18-month period immediately subsequent to the approval of the application may be terminated at the end of such period by the Secretary.

(f) *Assurances from applicants.* (1) In addition to any other requirement imposed under the Act, each grant in which construction is to be performed shall be subject to the condition that the applicant will furnish and comply with the following assurances and all other assurances set forth in the application for such grant:

(i) That, for a period of not less than 20 years after completion of construction of the project, it will be used as a public or other nonprofit rehabilitation facility;

(ii) That the applicant will provide a set of plans and specifications for the proposed project which have been approved by the Architectural and Transportation Barriers Compliance Board and in which due consideration shall be given to excellence of architecture and design; and

(iii) That the applicant will furnish an annual report and such other progress reports and other information as the Secretary may require.

(2) The Secretary may, at any time, approve exceptions to these conditions and assurances where he finds that such exceptions are not inconsistent with the Act and the purposes of the program.

(g) *Construction standards and other standards.* (1) Approved projects shall be constructed according to minimum standards of construction and equipment for rehabilitation facilities specified by the Secretary. Applicable State and local codes and regulations must be observed. The Secretary's standards must be followed where they exceed any State and local codes and regulations.

(2) Approved projects shall meet the requirements of the Occupational

Safety and Health Act (Pub. L. 91-576); the National Environmental Policy Act of 1969 and E.O. 11514 (34 FR 4247) relative to environmental impact; the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," No. A 117.1-1961, as modified by other standards prescribed by the Secretary of Housing and Urban Development (24 CFR Part 40) or the Administrator of General Services (41 CFR 101-17.703); section 106 of Pub. L. 89-665 relative to the preservation of historic sites; E.O. 11296 (31 FR 10663) relative to the avoidance of flood hazards; the Flood Disaster Protection Act of 1973 (Pub. L. 93-234); E.O. 11288 (31 FR 9261) relative to the prevention, control, and abatement of water pollution; and in the case of State and local agencies, the regulations on relocation assistance and real property acquisition contained in Part 15 of this title.

§ 362.52 Initial staffing grants.

(a) *Purpose.* Under section 301(c) of the Act, grants may be made to assist in paying part of the costs of compensation of the initial professional and technical staff of any public or nonprofit rehabilitation facility constructed after September 26, 1973.

(b) *Eligible applicants.* (1) New applications may be made by public or other nonprofit rehabilitation facilities constructed after September 26, 1973. Continuation applications may be made by those public or other nonprofit rehabilitation facilities constructed prior to September 26, 1973, which were recipients of initial staffing grants on September 26, 1973.

(2) Initial staffing grants may be made only with respect to the operation of a rehabilitation facility following construction. Where the rehabilitation facility is in operation prior to construction, an initial staffing grant shall be made only for additional staff which will enable the facility to provide new services or extend existing services to a substantially increased number of clients. Where the construction consists of expansion, remodeling, alteration, or renovation of an existing rehabilitation facility, such expansion, remodeling, alteration, or renovation shall be extensive enough to result in the addition of new services or the extension of existing services to a substantially increased number of handicapped individuals.

(c) *Matching requirements.* The amount of the Federal share under an initial staffing grant shall be related directly to the date of the commencement of the operation of the rehabilitation facility. The date of commencement of a rehabilitation facility shall be that date on which the first client is admitted for services after the completion of the related construction project or such earlier date after completion of such project as is specified in the approved application for the initial staffing grant. A grant shall not exceed 75 per centum of eligible costs for the period ending with the close of the 15th month following the month in which such operation commenced, 60 per centum of such costs for the first year thereafter, 45 per centum of such costs for the second year thereafter, and 30 per centum of such costs for the third year thereafter.

(d) *Federal financial participation.* Federal financial participation may be available for personnel costs (including fringe benefits) of initial staff as set forth in the approved application.

(e) *Project period.* A project may be approved for a project period not to exceed 4 years and 3 months.

§ 362.53 Rehabilitation facility improvement grants.

(a) *Purpose.* Under section 302(c) of the Act, grants may be made for paying part of the costs of projects for rehabilitation facilities, or an organization or combination of such rehabilitation facilities, to analyze, improve, and increase their professional services to handicapped individuals, their management effectiveness or any other part of their capacity to provide employment and services for handicapped individuals.

(b) *Eligible applicants.* Applications may be made by any public or nonprofit rehabilitation facility, organization or combination of such rehabilitation facilities: In the case of rehabilitation facilities, such facilities must have been in operation for at least 12 months.

(c) *Matching requirements.* The Federal share of the approved project costs shall not exceed 80 per centum of the total project cost.

(d) *Federal financial participation.* Federal financial participation may be available for costs specified in § 362.8 and may also be available for the costs of staff development activities, including educational leave. Personnel employed under the project shall be limited to additional staff.

(e) *Project period.* A project may be approved for a project period not to exceed 3 years.

Subparts D—G—[Reserved]

Subpart H—Technical Assistance

§ 362.100 Furnishing of technical assistance.

Technical assistance authorized in section 304(e) of the Act will be furnished, directly, or by contract with State vocational rehabilitation agencies or experts or consultants or groups thereof to provide technical assistance and consultation:

(a) To public and nonprofit rehabilitation facilities in matters of professional or business practice within the facility and

(b) To public and nonprofit agencies, institutions, organizations, or facilities for the purpose of planning or effecting the removal of architectural and transportation barriers: *Provided,* That such technical assistance shall be provided with the concurrence of the Architectural and Transportation Barriers Compliance Board.

§ 362.101 Per diem payments.

Experts or consultants, while providing technical assistance consultations pursuant to § 362.100, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the prorated pay rate for a person employed at a GS-18, under section 5332 of Title 5, United States Code, including travel time, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5, United States Code, for persons in the government service employed intermittently.

§ 362.102 Recommendations and reports.

A rehabilitation facility or public or nonprofit agency, institution, organization or facility which receives technical assistance consultations will be furnished with the recommendations of the consultant. A copy of the recommendations will also be furnished to the appropriate State agency. The rehabilitation facility or public or nonprofit agency, institution, organization or facility receiving the technical assistance will be expected to provide a prompt report to the Rehabilitation Services Administration concerning the consultation and a report 6 months afterwards as to what has been done about the recommendations.

PART 365—THE STATE INDEPENDENT LIVING REHABILITATION SERVICES PROGRAM

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AUTHORITY: Sec. 12(c) of the Rehabilitation Act of 1973, (29 U.S.C. 711(c)), unless otherwise noted.

SOURCE: 46 FR 5545, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 365.1 The State independent living rehabilitation services program.

(a) General Part 365 includes all requirements relative to the conduct of State independent living rehabilitation service programs under State plans for independent living rehabilitation services authorized under Part A of Title VII of the Rehabilitation Act of 1973, as amended. Part 365 covers the procedures to be followed by a designated State unit in submitting a State plan for approval by the Secretary and the required scope and content of an approvable State plan.

(b) *Regulations which apply to the State independent living rehabilitation services program.* The following regulations apply to the State plan for independent living rehabilitation services programs;

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board) except for hearings under Subpart G of Part 361.

(2) The regulations in this Part 365.

(c) *Definitions which apply to the State independent living program.* (1) The following terms used in this Part 365 are defined in 34 CFR Part 77:

"EDGAR"
"Fiscal year"
"Nonprofit"
"Public"
"Secretary"
"State"

(2) The following terms used in this Part 365 are defined in 34 CFR 361.1 of this chapter:

"Act"
"Blind"
"Construction of a rehabilitation facility"
"Designated State unit"
"Establishment of a rehabilitation facility"
"Physical and mental restoration services"
"Physical or mental disability"
"Rehabilitation facility"
"State unit"
"Vocational rehabilitation services"

(3) The following definitions also apply to this Part 365:

"*Attendant care*" means the assistance provided to a severely handicapped individual in performing a variety of tasks required to meet essential personal needs in such areas as bathing, communicating, cooking, dressing, eating, homemaking, toileting and transportation.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

"*Health maintenance*" means the provision of those health care services which are necessary for a severely handicapped individual to maintain or improve his or her functional capabilities and those services which might contribute to avoiding complications or reactivations of the severely handicapping impairment or the development of additional impairments.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

"*Independent living rehabilitation services,*" or "independent living services," when provided to a severely handicapped individual, means those services listed in § 365.37.

(Authority: Sec. 702(b) of the Act; 29 U.S.C. 796a(b))

"*Independent living rehabilitation services,*" or "independent living services," when provided for the benefit of groups of severely handicapped individuals, includes:

(i) The establishment or construction of a rehabilitation facility which provides independent living services to individuals;

(ii) The provision of other facilities and services which promise to contribute substantially to the independent living rehabilitation of a group of severely handicapped individuals but which are not related directly to the individualized written rehabilitation program of any one severely handicapped individual;

(iii) The use of existing telecommunications systems; and

(iv) The use of services providing recorded materials for blind individuals and captioned films or videocassettes for deaf individuals.

(Authority: Sec. 702(b) of the Act; 29 U.S.C. 796a(b))

"*Severely handicapped individual*" means an individual whose ability to function independently in family or community, or whose ability to engage or continue in employment is so limited by the severity of his or her physical or mental disability that it has been determined that independent living rehabilitation services are required in order to enable achieving a greater level of independence in functioning in family or community or engaging or continuing in employment.

(Authority: Sec. 702(a) of the Act; 29 U.S.C. 796a(a))

"*State plan*" means the State plan for independent living rehabilitation services.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

"*Transportation*" means necessary travel in connection with a severely handicapped individual's engaging in or maintaining employment or improving his or her ability to carry out independent living activities within family or community.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

[46 FR 5545, Jan. 19, 1981, as amended at 50 FR 38630, Sept. 23, 1985]

Subpart B—State Plans for Independent Living Rehabilitation Services

STATE PLAN CONTENT: ADMINISTRATION

§ 365.2 The State plan: General requirements.

(a) *Purpose.* In order for a State unit to be eligible for grants from the allotment of funds under Title VII of the Act, it must submit an approvable State plan for providing independent living rehabilitation services to severely handicapped individuals.

(b) *Form and content.* The State plan must contain, in the form prescribed by the Secretary, a description of the State's independent living rehabilitation program, the plans and policies to be followed in carrying out the program, and other information requested by the Secretary.

(c) *Consolidated rehabilitation plan.* The State may choose to submit a consolidated rehabilitation plan which includes both the State plan for vocational rehabilitation services and the State plan for independent living rehabilitation services. The State may also choose to submit a consolidated plan which includes either or both of the State's rehabilitation plans and the State's plan for services for persons with developmental disabilities developed under the Developmental Disabilities Assistance and Bill of Rights Act.

(d) *Duration.* The State plan must cover a three-year period and must be amended whenever necessary to reflect any material change in any applicable phase of State law, organization, policy or agency operations which affects the administration of the State plan

(Authority: Secs. 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.3 State plan approval.

Except in the case of the first State plan submitted under Title VII, the State plan must be submitted for approval no later than July 1 of the year preceding the first fiscal year of the three-year period for which the State plan is submitted.

(Authority: Sec. 705(b) of the Act; 29 U.S.C. 796d(b))

§ 365.4 Withholding of funds.

(a) *When withheld.* Payments under section 704 of the Act may be withheld, suspended, or limited as provided by section 101(c) of the Act, when after a reasonable notice and opportunity for hearing has been given to the designated State unit, the Secretary finds that:

(1) The State plan has been so changed that it no longer conforms with the requirements of section 705 of the Act, or

(2) In the administration of the State plan, there is a failure to comply substantially with any provision of such plan.

(b) *Notification to State unit.* The designated State unit is notified of the decision.

(c) *Judicial review.* The decision to withhold, suspend, or limit payments described in paragraph (a) of this section may be appealed to the United States Court of Appeals for the circuit in which the State is located, in accordance with section 101(d)(1) of the Act.

(d) *Informal discussions.* Hearings meeting the requirements of § 361.5(a) of this chapter are not called until after reasonable effort has been made to resolve the questions involved by conference and discussion with State officials.

(Authority: Secs. 12(c) and 101(c) and 705(b) of the Act; 29 U.S.C. 711(c), 721(c) and 796d(b))

§ 365.5 State unit for administration.

(a) *Designation of State unit.* The State plan must provide that the designated State unit administers the State's independent living rehabilitation service program conducted under this part.

(b) *Designation of State unit for the blind.* The State plan may designate a State commission for the blind or the organizational unit of another agency of the State which is authorized under State law to provide vocational rehabilitation services to blind individuals under a State plan for vocational rehabilitation services, as the State unit to administer that part of the plan under which independent living services are provided to blind individuals.

(c) *Responsibility for administration.* The State plan must assure that all decisions affecting eligibility for, the nature and scope of available independent living rehabilitation services, and the provision of these services are made by the designated State unit, and that this responsibility may not be delegated to any other agency, facility, or individual.

(Authority: Secs. 12(c) and 705(a)(1) of the Act; 29 U.S.C. 711(c) and 796(a)(1))

§ 365.6 Staffing of designated State unit.

(a) *General staffing requirement.* The State plan must assure that the staff of the designated State unit includes specialist personnel skilled in the coordination and provision of independent living services to severely handicapped individuals.

(b) *Special communication needs staffing.* The State plan must also assure that the State unit makes available personnel able to communicate with applicants for service and with severely handicapped individuals who rely on special modes of communication, such as manual communication or nonverbal communication devices, and personnel able to communicate in the native languages of applicants for service and of severely handicapped individuals with limited English-speaking ability from ethnic groups which represent substantial segments of the population of the communities in which the services are being provided.

(Authority: Secs. 12(c), 101(a)(7), and 705(a) of the Act; 29 U.S.C. 711(c), 721(a)(7), and 796d(a))

§ 365.7 Staff development.

The State plan must assure a program of staff development for all classes of positions involved in providing independent living services within the designated State unit. The staff development program must emphasize improving the skills of staff directly responsible for the provision of independent living services.

(Authority: Secs. 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.8 State unit studies and evaluations.

(a) *Scope of studies.* The State plan must assure that the State unit conducts or has previously conducted studies of the independent living rehabilitation service needs of severely handicapped individuals within the State, including comparative studies of the different methods for providing these services, such as regional and community centers, centers for independent living, halfway houses, and patient-release programs. The State plan must also assure that the State unit conducts studies to determine effective alternatives to institutionalization. Any studies carried out under the plan must fully utilize findings from relevant studies which have been conducted in the past.

(b) *Evaluations.* The State plan must assure that the State unit conducts evaluations of the effectiveness of the State unit's independent living rehabilitation program in meeting the service needs of severely handicapped individuals in the State. These evaluations must measure the adequacy of State unit performance in providing independent living services to severely handicapped individuals, in the light of program and financial resources available in the State.

(c) *Use of findings.* The State plan must also assure that findings from the State's studies and evaluations are utilized in planning for and improving future independent living services.

(Authority: Sec. 705(a)(2) of the Act; 29 U.S.C. 796d(a)(2))

§ 365.9 State plan and policy development consultation.

(a) *Advisory committee.* The State plan must assure that the State unit organizes a committee of severely physically and mentally handicapped persons, which may include parents or guardians of severely handicapped persons as necessary, to consult on a continuing basis in the initial development and periodic revision of the State plan. The members of the advisory committee must serve on a rotating basis after severely handicapped persons in the State have been provided an opportunity to suggest those individuals considered by them to be best qualified to represent severely handicapped individuals in need of independent living services. The State plan must assure that this committee periodically consults with the State unit in matters of policy and program development and implementation which affect the overall administration of the State's independent living rehabilitation service program. The committee must also participate actively in the periodic evaluations of the State's independent living rehabilitation service program.

(b) *Other consultations.* The State plan must also assure that there is a procedure for taking into account the views of providers of independent living services and other individuals interested in services for severely handicapped individuals.

(Authority: Secs. 12(c) and 705(a)(7) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.10 Provision of technical assistance in poverty areas.

The State plan must assure that the State unit undertakes special efforts to provide technical assistance to public and other nonprofit agencies and organizations located in areas of urban or rural poverty which are interested in developing capability for providing independent living services. The State unit must annually report those special efforts which have been undertaken in this regard.

(Authority: Sec. 705(a)(6) of the Act; 29 U.S.C. 796d(a)(6))

§ 365.11 Cooperation with other public agencies.

The State plan must assure that, to the greatest extent possible, the designated State unit enters into cooperative arrangements or cooperative agreements with, and utilizes the services and facilities of, other State and local public agencies which provide services to severely handicapped individuals, including those agencies administering the State's special education, vocational education, and developmental disabilities service programs, public health, mental health, and mental retardation programs, housing, and transportation programs, Veterans Administration programs, and the programs authorized under Title XIX and Title XX of the Social Security Act.

(Authority: Secs. 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.12 Utilization of local, public and private nonprofit agencies, organizations, and facilities.

(a) *General provisions.* The State plan must assure that the State unit utilizes local public and private nonprofit agencies, organizations, and facilities, as appropriate, to provide independent living services. The State plan must describe the methods and criteria to be used to ensure the appropriate use by the State unit of these local agencies, organizations, and facilities, including entering into agreements with them or making direct grants to them for providing independent living services.

(b) *Special requirements for State unit grantees.* Any agency, organization, or facility awarded a grant by the State unit must assure that severely handicapped individuals are fully involved in policy and program development activities affecting the provision of independent living rehabilitation services. Any agency, organization, or facility awarded a grant by a State unit must also assure that any services provided under the grant are at least of the same quality as services provided directly by the State unit.

(c) *Grants from State units.* At least 20 percent of the funds received by a State under this part must be used to make grants to local public agencies and private nonprofit organizations for the conduct of independent living service programs. The State plan must assure that the State unit makes the availability of funds known to potential applicants within the State and identifies that criteria against which applications for grant funds are evaluated. These criteria must provide priority in the awarding of funds to those agencies and organizations which are directed and managed to a substantial degree by qualified severely handicapped individuals.

(d) *Waiver of grants by State units.* The designated State unit may request from the Secretary a waiver of the requirement that grants in the amount required under paragraph (c) of this section be made for any fiscal year when there is sufficient evidence to determine that the local agencies and organizations cannot use the funds effectively. In waiving this requirement, the Secretary considers such factors as the number of agencies and organizations which have indicated an interest in applying for funds, the capability of these agencies and organizations, and the efforts which have been made by the State unit to improve the capacity of the agencies and organizations for conducting independent living rehabilitation service programs.

(e) *Priority for State unit clients.* When a program of independent living rehabilitation services is conducted by a local public agency or a private nonprofit organization, the program must be designed primarily to serve those severely handicapped individuals who are determined by the State unit to be eligible for independent living services under the State plan.

(f) *State unit plans under related funding programs.* The State plan must specify the State unit's goals and plans with respect to the distribution of any Federal funds received for the establishment and operation of independent living centers under Section 711 of the Act. The State plan must further indicate whether the State unit will directly apply for independent living center grants or whether local public agencies or private nonprofit organizations in the State will have the opportunity to apply for Federal funds under Section 711 of the Act.

(Authority: Secs. 12(c), 705(a)(8) and 705(a)(3)(A) of the Act; 29 U.S.C. 711(c), 796d(a)(8), and 796(d)(a)(3)(A))

§ 365.13 Independent living services for older blind individuals.

The State plan must assure that the State unit seeks to incorporate within its program of services any new methods or approaches to the provision of independent living rehabilitation services to older blind individuals which have been demonstrated to be effective under a special project under Section 721 of the Act. (Grants for independent living services for older blind individuals). The Secretary advises the State unit when the results of a special project have been found to be effective and requires that they be integrated within the State program to the extent feasible.

(Authority: Secs. 12(c) and 721(b) of the Act; 29 U.S.C. 711(c) and 796f(b))

§ 365.14 Reports.

The State plan must assure that the State unit submits reports in the form and detail and at the time required by the Secretary, and complies with any requirements necessary to assure the correctness and verification of these reports.

(Authority: Secs. 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.15 Other administrative and fiscal requirements.

(a) *Applicability of vocational rehabilitation regulations.* Certain regulations covering the State plan for vocational rehabilitation services also apply under this part for purposes of the State plan for independent living rehabilitation services. These regulations include:

§ 361.7 Designation of substitute State vocational rehabilitation agency.
§ 361.10 Methods of administration.
§ 361.15 Affirmative action plan for handicapped individuals.
§ 361.24 General administrative and fiscal requirements (except as provided in paragraph (b) of this section relative to 34 CFR Part 74).
§ 361.44 Authorization of services.
§ 361.47 Participation by handicapped individuals in the costs of vocational rehabilitation services.
§ 361.48 Administrative review of agency action, and fair hearing; review by Secretary.
§ 361.49 Protection, use, and disclosure of personal information.
§ 361.76 State and local funds.
§§ 361.170–361.186 Procedures for Hearings on State Plan Conformity and Compliance.

(b) *Program administration.* Federal financial participation is available in expenditures under the State plan for the provision of services and for program planning, development, evaluation, and control; research; advocacy; interpretation of the program to the public; personnel administration, including the administration of affirmative action plans; use of advisory committees; the removal of architectural barriers in State unit offices and facilities; program accreditation; and training and staff development for State unit personnel. All expenditures in which Federal financial participation is claimed under the State plan must be subject to the administrative or supervisory control of the designated State unit.

(Authority: Secs. 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

STATE PLAN CONTENT: PROVISION AND SCOPE OF SERVICE

§ 365.30 Processing referrals and applications.

The State plan must assure that the State unit establishes and maintains written standards and procedures to assure expeditious and equitable handling of referrals and applications from severely handicapped persons for independent living services.

(Authority: Secs. 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.31 Eligibility.

(a) *General provisions.* (1) The State plan must assure that eligibility requirements are applied by the designated State unit without regard to sex, race, creed, color, or national origin of the individual applying for service. The State plan must specify that no group of individuals is excluded from service solely on the basis of the type of disability or on the basis of age.

(2) The State plan must assure that no residence requirement is imposed which excludes from services under the plan any individual who is present in the State.

(b) *Basic conditions.* The State plan must assure that eligibility is based only upon:

(1) The presence of a severe physical or mental disability;

(2) The presence of a severe limitation in ability to function independently in family or community or to engage or continue in employment; and

(3) A reasonable expectation that independent living rehabilitation services will significantly assist the individual to improve his or her ability to function independently in family or community or to engage or continue in employment. For purposes of determining an individual's eligibility for independent living services, improvement in ability to function independently in family or community refers to a demonstration in functional and behavioral terms of an individual's greater independence or maintenance of independence in such areas as self-care, activities of daily living, driving, using public transportation, shopping, housekeeping, communicating, or living more independently.

(Authority: Secs. 12(c), 702(a) and 705(a) of the Act; 29 U.S.C. 711(c), 796a(a) and 796d(a))

§ 365.32 Determination of eligibility for independent living rehabilitation services.

(a) *General provisions.* The State plan must assure that the State unit conducts an evaluation of each severely handicapped person who applies for independent living services. This evaluation is limited to that information necessary to determine whether the individual is eligible to be provided independent living services and to determine which independent living services are needed. The evaluation takes into consideration any relevant case record materials available from files of the designated State unit or from the files of other agencies. A special diagnostic study is conducted specifically for purposes of determining eligibility for independent living services only if already available information is not complete, relevant, or current.

(b) *Scope of evaluation.* The State plan must also assure that the evaluation is sufficient in scope to determine which services will best meet the current and future needs of the individual for functioning more independently in family or community or engaging or continuing in employment.

(Authority: Secs. 12(c), 702(a) and 705(a) of the Act; 29 U.S.C. 711(c), 796a(a) and 796d(a))

§ 365.33 Certification of eligibility or ineligibility.

(a) *Certification of eligibility.* The State plan must assure that, before or at the same time as acceptance of a severely handicapped individual for independent living rehabilitation services, there must be a certification that the individual has met the basic requirements specified in § 365.31. The State plan must also assure that the certification is dated and signed by an appropriate staff member of the designated State unit.

(b) *Certification of ineligibility.* (1) The State plan must assure that whenever it is determined that independent living services cannot be expected to assist an individual to engage or continue in employment or to function more independently in family or community, there must be a certification dated and signed by an appropriate staff member of the State unit.

(2) The State plan must also assure that the certification indicates the reasons for the ineligibility determination and is made only after full consultation with the individual or, as appropriate, his or her parent, guardian, or other representative, or after giving a clear opportunity for this consultation. In this case, the State unit notifies the individual in writing of the action taken and informs the individual of his or her rights and the means by which he or she may express and seek remedy for any dissatisfactions, including procedures for administra-

tive review and fair hearings. When appropriate, the individual is provided a detailed explanation of the availability of the resources within a protection and advocacy project established within the State under section 731 of the Act, and referral is made to other agencies and facilities, including the State's vocational rehabilitation program under Part 361 of this chapter.

(3) The State plan must also assure that when an applicant for independent living services has been certified as ineligible because of a determination that these services cannot be expected to assist the individual to engage or continue in employment or to function more independently in family or community, the individual's current status will be reviewed no later than 12 months after the determination has been made. The review need not be conducted in situations where the individual has refused the review, the individual is no longer present in the State, or the individual's whereabouts are unknown.

(Authority: Secs. 12(c), 702(a) and 705(a) of the Act; 29 U.S.C. 711(c), 796a(a) and 796d(a))

§ 365.34 Order of selection for services.

The State plan must show the order to be followed in selecting groups of severely handicapped individuals to be provided independent living rehabilitation services when services cannot be provided to all eligible persons who apply. The State plan must assure that first priority is given to those severely handicapped individuals, including homebound individuals, who are not presently receiving vocational rehabilitation services under the State vocational rehabilitation service program under Part 361 because of the severity of their physical or mental disability, and those severely handicapped individuals who are institutionalized, have been institutionalized in the past, or are at risk of becoming institutionalized.

(Authority: Secs. 12(c), 702(a) and 705(a)(2) of the Act; 29 U.S.C. 711(c), 796a(a) and 796d(a)(20))

§ 365.35 The case record for the individual.

The State plan must assure that the State unit maintains for each applicant for independent living services and for each individual receiving these services, a case record which includes documentation concerning the individual's eligibility for service and the provision and payment for services.

(Authority: Secs. 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.36 The individualized written rehabilitation program for independent living rehabilitation services.

(a) *General provision.* The State plan must assure that an individualized written rehabilitation program is initiated and periodically updated for each severely handicapped individual provided independent living rehabilitation services. The State plan must also assure that each independent living service is provided in accordance with the written program. The individualized written rehabilitation program must be developed jointly by the appropriate staff member of the State unit and the severely handicapped individual or, as appropriate his or her parent, guardian or other representative. A copy of the written program, and any amendments, must be provided to the severely handicapped individual or, as appropriate, his or her parent, guardian or other representative.

(b) *Initiation of program.* The individualized written rehabilitation program must be initiated after certification of eligibility under § 365.33 and must indicate the goals established for each individual, the services to be provided, and the anticipated duration of the service program and each component service.

(c) *Review.* The State plan must assure that the individualized written program will be reviewed as often as necessary but at least on an annual basis to determine whether services should be continued, modified, or discontinued, or whether the individual should be referred to a program of vocational rehabilitation services under Part 361 or to any other program of assistance. Each severely handicapped individual, or, as appropriate, his or her parent, guardian or other representative must be given an opportunity to review the program and, if necessary, jointly redevelop and agree by signature to its terms.

(d) *Review of ineligibility determination.* The State plan must assure that if services are to be terminated under a written program for any reason, the following conditions and procedures must be met or carried out:

(1) This decision is made only with the full participation of the individual, or, as appropriate, his or her parent, guardian, or other representative, unless the individual has refused to participate, the individual is no longer present in the State, or his or her whereabouts are unknown. When the full participation of the individual or a representative of the individual has been secured in making this decision, the views of the individual are recorded in the individualized written rehabilitation program;

(2) The rationale for the ineligibility decision is recorded as an amendment to the individualized written rehabilitation program certifying that the provision of independent living services has demonstrated that the individual is not capable of functioning more independently in family or community or engaging or continuing in employment. A certification of ineligibility under § 365.33 is then executed; and

(3) There is a periodic review, at least annually of the ineligibility decision in which the individual is given opportunity for full consultation in the reconsideration of the decision, except in situations where a periodic review would be precluded because the individual has refused services or has refused a periodic review, the individual is no longer present in the State, or his or her whereabouts are unknown. The first review of the ineligibility decision is initiated by the State unit. Any subsequent reviews are undertaken at the request of the individual.

(e) *Coordination with vocational rehabilitation, developmental disabilities and education programs.* The development of the individualized written rehabilitation program for independent living services and the provision of these services must be coordinated to the maximum extent possible with the individualized written rehabilitation program for vocational rehabilitation services for that individual, if there is such a written program. This must also be coordinated with any individualized written habilitation program for the individual prepared under the Developmental Disabilities Assistance and Bill of Rights Act or with any individualized education program for the individual prepared under Part B of the Education for All Handicapped Children Act.

(Authority: Secs. 12(c) and 705(a)(4) and 705(a)(5) of the Act; 29 U.S.C. 711(c) 796d(a)(4) and (5))

§ 365.37 Scope of State unit program; independent living rehabilitation services for individuals.

(a) *Scope of services.* The State plan must specify those independent living services available for meeting the independent living rehabilitation service needs of severely handicapped individuals in the State. The services which may be provided to any severely handicapped individual may be any of the following independent living rehabilitation services, as appropriate:

(1) Counseling services, including psychological counseling, psychotherapeutic counseling, peer counseling, advocacy services and related services;

(2) Housing incidental to the provision of any independent living rehabilitation service, and including appropriate accommodations to, and modifications of, any space utilized to serve severely handicapped individuals;

(3) Physical and mental restoration services, including:

(i) Physical and mental medical rehabilitation services;

(ii) Dentistry services;

(iii) Nursing services;

(iv) Therapeutic treatment, such as physical therapy, occupational therapy, speech, language and hearing therapy, therapeutic recreation, drama therapy, music therapy, dance therapy and art therapy;

(v) Health maintenance;

(vi) Eyeglasses and visual services; and

(vii) Prosthetic, orthotic and other assistive appliances and devices.

(4) Attendant care;

(5) Transportation;

(6) Interpreter services for deaf individuals, including tactile interpretation for deaf-blind individuals;

(7) Reading services, rehabilitation teaching services, and orientation and mobility services for blind individuals;

(8) Recreational activities;

(9) Services to members of a severely handicapped individual's family when necessary for improving the individual's ability to live and function more independently, or the individual's ability to engage or continue in employment;

(10) Vocational and other training services, including personal and vocational adjustment when necessary for improving a severely handicapped individual's ability to live and function more independently, or his or her ability to engage or continue in employment;

(11) Job placement services;

(12) Referral services;

(13) Telecommunications, sensory and other technological aids and devices;

(14) Services for children of preschool age including physical therapy, development of language and communication skills, and child development services;

(15) Any other vocational rehabilitation services available under the State plan for vocational rehabilitation services under Part 1361 of this chapter, which are appropriate to the independent living rehabilitation needs of a severely handicapped individual; and

(16) Any appropriate preventive services necessary to decrease the future needs of a severely handicapped individual assisted under this program for similar services.

(b) *Written policies.* The State plan must also assure that the State unit establishes and maintains written policies covering the quality, scope, and extent of each of the independent living services listed in paragraph (a) of this section which is to be provided under the State program, and the conditions, criteria, and procedures under which the service is to be provided. These policies must assure that when services are being provided solely to assist a severely handicapped individual to secure or engage in employment, the services must be provided under Part 1361 if the individual is also eligible for vocational rehabilitation services.

(Authority: Secs. 12(c) and 702(b) of the Act; 29 U.S.C. 711(c) and 796a(b))

§ 365.38 Case closure.

The State plan must assure that when all objectives identified for a severely handicapped individual under an individualized written rehabilitation program are achieved, the case is closed. When the case is closed, there must be a record describing the way in which the severely handicapped individual has benefited from independent living rehabilitation services and has significantly improved his or her ability to engage or continue in employment or to function independently in family or community.

(Authority: Secs. 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.39 Duration.

The State plan must assure that no uniform durational requirement is imposed. The estmated duration of each service must be recorded for each individual under an individualized written rehabilitation program.

(Authority: Secs. 12(c) and 705(a) of the Act; 29 U.S.C. 711(c) and 796d(a))

§ 365.40 Standards for facilities and providers of services.

The State plan must assure that the State unit maintains written standards for the various types of facilities and providers of services utilized by the State unit in providing independent living services to severely handicapped individuals. The designated State unit must assure that providers of service meet all licensure or certification requirements in the State. The State unit must also assure that any facilities used in connection with the delivery of services under this program are free from communication and transportation barriers and meet the standards specified in the Architectural Barriers Act of 1968 and, the "American Standard Specification for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped," No. A117.1-1961, as amended, and its implementation standards, 41 CFR Part 101-19.6 et seq.

(Authority: Secs. 12(c), 101(a)(7) and 705(a)(3) of the Act; 29 U.S.C. 711(c), 721(a)(7) and 796d(a)(3))

§ 365.41 Scope of State unit program: Establishment and construction of rehabilitation facilities.

If the State plan provides for the establishment and construction of rehabilitation facilities which provide independent living services, it must further assure that the primary purpose of the establishment of construction of any facility is to provide independent living rehabilitation services to severely handicapped individuals under this part. The provisions of § 361.51 and § 361.52 concerning the establishment and construction of rehabilitation facilities under the State plan for vocational rehabilitation services also apply.

(Authority: Secs. 12(c), 103(b) and 702(b) of the Act; 29 U.S.C. 711(c), 723(b), and 796a(b))

§ 365.42 Scope of State unit program: Facilities and services for groups of severely handicapped individuals.

The State plan may provide for facilities and services which may be expected to contribute substantially to the rehabilitation of a group of severely handicapped individuals but which are not related directly to the individualized rehabilitation program of any one individual. If the State plan includes these facilities and services, it must further assure that the State unit establishes and maintains written policies covering their provision.

(Authority: Secs. 12(c), 103(b) and 702(b) of the Act; 29 U.S.C. 711(c), 723(b), and 796a(b))

§ 365.43 Scope of State unit program: Telecommunications systems and special materials for blind individuals and deaf individuals.

The State plan may provide for the use of existing telecommunications systems which have the potential for substantially improving independent living rehabilitation service delivery methods and the delivery of appropriate programming to meet the particular needs of severely handicapped individuals. The State plan may also provide for the use of special services available to provide recorded material for blind individuals and captioned television, films or video cassettes for deaf individuals. If the State plan includes these services, it must further assure that the State unit shall establish and maintain written policies covering their provision.

(Authority: Secs. 12(c), 103(b) and 702(b) of the Act; 29 U.S.C. 711(c), 723(b) and 796a(b))

Subpart C—Allotment and Payment

§ 365.44 Allotment of Federal funds for independent living services.

(a) The allotment of Federal funds for independent living services for each State is computed in accordance with the requirements of section 703 of the Act.

(b) Where the State plan designates separate units to administer the part of the plan under which independent living rehabilitation services are provided for blind individuals, and the rest of the plan, respectively, the division of the State's allotment is a matter for State determination.

(Authority: Sec. 703 of the Act; 29 U.S.C. 796(b))

§ 365.45 Payments from allotments for independent living services.

The Secretary pays to each State an amount computed in accordance with the requirements of section 704 of the Act. The Federal share is 90 percent except for the cost of construction of rehabilitation facilities where the Federal share may be no more than 50 percent.

(Authority: Sec. 704 of the Act; 29 U.S.C. 796(c))

PART 366—CENTERS FOR INDEPENDENT LIVING

Subpart A—General

Sec.

366.1 What is the Centers for Independent Living Program?
366.2 Who is eligible for assistance under this program?
366.3 What regulations apply to this program?
366.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

366.10 What specific activities may be supported under this program?

Subpart C—How Does one Apply for a Grant?

366.20 What are the application requirements?

Subpart D—How Does the Secretary Make a Grant?

366.30 How does the Secretary evaluate an application?
366.31 What selection criteria does the Secretary use in this program?

Subpart E—What Conditions Must Be Met by a Grantee?

366.40 What are the matching requirements?
366.41 How are services to be administered under this program?
366.42 What the requirements pertaining to the protection, use, and release of personal information?

AUTHORITY: Sections 12(c) and 711 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 711(c) and 796(e)), unless otherwise noted.

SOURCE: 46 FR 5411, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 366.1 What is the Centers for Independent Living Program?

This program is designed for planning, establishing and assisting in the continuing operation of centers for independent living.

(Authority: Sec. 711 of the Act; 29 U.S.C. 796e)

§ 366.2 Who is eligible for assistance under this program?

(a) Applications may be made by designated State vocational rehabilitation units.

(b) If a designated State unit has failed to submit an application within six months after the beginning of a fiscal year or if a State unit has advised the Secretary in writing at any time within six months after the beginning of a fiscal year of its decision not to submit an application, applications for Federal assistance may be made by local public agencies and by private nonprofit organizations within the State. The written statement of a designated State unit decision not to apply is binding for that fiscal year.

(Authority: Secs. 711 (a) and (d) of the Act; 29 U.S.C. 796e(d))

§ 366.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Program), and Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(b) The regulations in this Part 366.

(Authority: 711 of the Act; 29 U.S.C. 796(e))

[50 FR 38630, Sept. 23, 1985]

§ 366.4 What definitions apply to this program?

(a) The following definitions in 34 CFR Part 77 apply to this program—

Applicant
Application
Award
Budget Period
Department
EDGAR
Nonprofit
Project
Project Period
Public
Secretary

(b) The following definitions also apply to the Centers for Independent Living Program—

"Center for independent living" means a program of services or a facility which offers a combination of independent living services for severely handicapped individuals or groups of severely handicapped individuals such as:

(1) Intake counseling to determine the severely handicapped individual's need for specific independent living services;

(2) Referrals and counseling services with respect to attendant care;

(3) Attendant care and the training of personnel to provide attendent care;

(4) Counseling and advocacy services with respect to legal and economic rights and benefits;

(5) Peer counseling;

(6) Independent living skills, counseling and training, including training in the maintenance of necessary equipment, training in job seeking skills, counseling on therapy needs and programs, and special independent living skill training for blind individuals or deaf individuals;

(7) Housing and transportation referral and assistance;

(8) Surveys, directories, and other activities to identify appropriate housing and accessible transportation and other support services;

(9) Health maintenance programs;

(10) Community group living arrangements;

(11) Education and training necessary for living in the community and participating in community activities;

(12) Individual and group social and recreational activities;

(13) Interpreter services for deaf or deaf-blind individuals and reading services for blind individuals; and

(14) Other programs and services necessary to provide resources, training, counseling, services or other assistance of substantial benefit in promoting the independence, productivity and quality of life for severely handicapped individuals.

(Authority: Sec. 711(c) of the Act; 29 U.S.C. 796e(c))

"Designated State unit" or "designated State vocational rehabilitation unit" means either:

(1) The State agency vocational rehabilitation bureau, division, or other organizational unit which is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of handicapped individuals and which is responsible for the administration of the vocational rehabilitation program of the State agency; or

(2) The independent State commission, board, or other agency which has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Authority: Sec. 7(3) of the Act; 29 U.S.C. 706(3))

"Severely handicapped individual" means an individual whose ability to function independently in family or community, or whose ability to engage or continue in employment is so limited by the severity of his or her physical or mental disability that independent living rehabilitation services are required in order to achieve a greater level of independence in functioning in family or community or engaging or continuing in employment. Independent living rehabilitation services needed by a severely handicapped individual are appreciably more costly and of appreciably greater duration than vocational rehabilitation services that might be provided under 34 CFR Part 361.

(Authority: Sec. 702(a) of the Act; 29 U.S.C. 796a(a))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 366.10 What specific activities may be supported under this program?

(a) The Centers for Independent Living Program provides financial assistance for planning, establishing and operating centers for independent living. Grant funds under this program must be used only for establishing new centers for independent living or expanding or improving ongoing centers of independent living;

(b) Grant funds may not be used in whole or in part to supplant other existing funding support already being used by a center for independent living.

(Authority: Secs. 12(c) and 711 of the Act; 29 U.S.C. 711(c) and 796e)

Subpart C—How Does One Apply for a Grant?

§ 366.20 What are the application requirements?

In addition to the information required by 34 CFR 75.107, each applicant shall include in its application—

(a) An assurance that handicapped individuals will be substantially involved in policy direction and management of the center, and will be employed by the center;

(b) An assurance that the center will offer handicapped individuals a combination of independent living services, including, as appropriate, the services described in the definition of "center for independent living" in § 366.4(b); and

(c) A description of an annual evaluation plan which contains, at a minimum, the following elements:

(1) The numbers and types of handicapped individuals assisted.

(2) The extent to which individuals with varying handicapping conditions were served.

(3) The types of services provided.

(4) The sources of funding.

(5) The percentage of resources committed to each type of service provided.

(6) How services provided contributed to the maintenance of or the increased independence of handicapped individuals assisted.

(7) The extent to which handicapped individuals participate in management and decision making in the center.

(8) The extent of capacity building activities, including collaboration with other agencies and organizations.

(9) The extent of catalytic activities to promote community awareness, involvement, and assistance.

(10) The extent of outreach efforts and the impact of those efforts.

(11) A comparison, if appropriate, of prior year(s) activities with most recent year activities.

(Approved by the Office of Management and Budget under control number 1820-0018)

(Authority: Sec. 711(c) of the Act; 29 U.S.C 796e(c))

[50 FR 38630, Sept. 23, 1985]

Subpart D—How Does the Secretary Make a Grant?

§ 366.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application under this program on the basis of the criteria specified in § 366.31. The maximum possible score for each complete criterion is stated in parentheses. The number of points awarded for each criterion depends on how well the applicant meets all the elements under that criterion.

(b) The Secretary awards up to 100 points for these criteria.

(Authority: Secs. 12(c) and 711 of the Act; 29 U.S.C. 711(c) and 796e)

§ 366.31 What selection criteria does the Secretary use in this program?

(a) *Evidence of need* (5 points).

(1) The Secretary reviews each application for information that shows that the need for the project has been adequately justified;

(2) The Secretary looks for information that shows that need for the Center for Independent Living has been established in terms of existing programs and facilities and includes an assessment of the potential of the existing programs and facilities to meet service needs for independent living services of severely handicapped individuals in the geographical area to be served.

(b) *Plan of operation* (25 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Service comprehensiveness* (15 points).

(1) The secretary reviews each application for information that shows the comprehensiveness of the services to be available in each center.

(2) The Secretary looks for information that shows—

(i) Evidence that the center will utilize all presently available services;

(ii) Evidence that effort will be made to provide as many as possible of the services identified in the definition of "center for independent living" in § 366.4(b); and

(iii) Evidence that the project will service individuals with a broad range of disabilities including disabled persons who may have limited knowledge about the project such as the mentally retarded and the sensory impaired.

(d) *Quality of key personnel* (10 points).

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Involvement of severely handicapped persons* (20 points).

(1) The Secretary reviews each application for information that shows that severely handicapped persons are appropriately involved in conducting center activities.

(2) The Secretary looks for information that shows that severely handicapped persons or their parents, guardians or other representatives, as appropriate, will be substantially involved in planning, policy direction and management of the center and, to the greatest extent possible, will be employed by the center.

(f) *Budget and cost effectiveness* (10 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(g) *Evaluation plan* (5 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(h) *Adequacy of resources* (10 points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Authority: Secs. 12(c) and 711 of the Act; 29 U.S.C. 711(c) and 796e)

Subpart E—What Conditions Must Be Met By a Grantee?

§ 366.40 What are the matching requirements?

No minimum share is required of applicants but each applicant is encouraged to furnish as large a part of the total project costs as possible.

(Authority: Secs. 12(c) and 711 of the Act; 29 U.S.C. 711(c) and 796e)

§ 366.41 How are services to be administered under this program?

The designated State unit may either directly operate a center for independent living or a group of centers or it may award one or more contracts to other public or nonprofit agencies or organizations in the State for the purpose of operating a center or a group of centers.

(Authority: Secs. 12(c) and 711 of the Act; 29 U.S.C. 711(c) and 796e)

§ 366.42 What are the requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any project under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The use of information and records concerning individuals must be limited only to purposes directly connected with the project, including project evaluation activities. This information may not be disclosed, directly or indirectly, other than in the administration of the project unless the consent of the agency providing the information and the individual to whom the information applies, or his representative, has been obtained in writing. The Secretary and other Federal or State officials responsible for enforcing legal requirements have access to this information without written consent being obtained. The final product of the project may not reveal any personal identifying information without written consent of the individual or his or her representative.

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

Subpart A—General

Sec.

369.1 What are the Vocational Rehabilitation Service Projects?
369.2 Who is eligible for assistance under these programs?
369.3 What regulations apply to these programs?
369.4 What definitions apply to these programs?

Subpart B—[Reserved]

Subpart C—How Does One Apply For A Grant?

369.20 What are the application procedures for these programs?

Subpart D—How Does the Secretary Make A Grant?

369.30 How does the Secretary evaluate an application?
369.31 What general selection criteria does the Secretary use in reviewing an application?
369.32 What other factors does the Secretary consider in reviewing an application?

Subpart E—What Conditions Must Be Met By A Grantee?

369.40—369.41 [Reserved]
369.42 What special requirements affect provision of services to handicapped individuals?
369.43 What are the affirmative action plan requirements affecting grantees?
369.44 What are the special requirements for projects that involve construction?
369.45 What wage and hour standards apply to workshops?
369.46 What are the special requirements pertaining to the membership of project advisory committees?
369.47 What are the special requirements pertaining to the protection, use, and release of personal information?
369.48 What are the special requirements affecting the collection of data from State agencies?

AUTHORITY: Secs. 12(c), 112, 130, 305, 311(a)(1), 311(a)(3), 312, 316, and 621 of the Act; 29 U.S.C. 711(c), 732, 750, 775, 777(a)(1), 77a(a)(3), 777(b), 777f and 795g, unless otherwise noted.

SOURCE: 46 FR 5417, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 369.1 What are the Vocational Rehabilitation Service Projects?

(a) These programs provide financial assistance for the support of special project activities for providing vocational rehabilitation services and related services to handicapped individuals and other persons.

(b) The Secretary awards financial assistance through the following programs—

(1) Handicapped American Indian Vocational Rehabilitation Service Projects (34 CFR Part 371).

(2) Comprehensive Rehabilitation Centers (34 CFR Part 372).

(3) Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals (34 CFR Part 373).

(4) Special Projects and Demonstrations for Making Recreational Activities Accessible to Handicapped Individuals (34 CFR Part 374).

(5) Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects (34 CFR Part 375).

(6) Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth (34 CFR Part 376).

(7) Projects for Initiating Special Recreation Programs for Handicapped Individuals (34 CFR Part 378).

(8) Projects with Industry (34 CFR Part 379).

(Authority: Secs. 112, 130, 305, 306, 311a, 311(a)(3), 312, 316, 621 of the Act; 29 U.S.C. 732, 750, 775, 776, 777a(a)(1), 777a(a)(3), 777(b), 777f and 795g)

[46 FR 5417, Jan. 19, 1981, as amended at 50 FR 9962, Mar. 12, 1985; 51 FR 3895, Jan. 30, 1986]

§ 369.2 Who is eligible for assistance under these programs?

(a) *Handicapped American Indian Vocational Rehabilitation Service Projects.* Governing bodies of Indian tribes located on Federal and State reservations are eligible for assistance to support projects for providing vocational rehabilitation services to handicapped American Indians.

(Authority: Sec. 130 of the Act; 29 U.S.C. 750)

(b) *Comprehensive Rehabilitation Centers.* State vocational rehabilitation units are eligible for assistance to support comprehensive rehabilitation center projects.

(Authority: Sec. 305 of the Act; 29 U.S.C. 775)

(c) *Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals.* States and public and other nonprofit agencies and organizations are eligible for expanding or otherwise improving vocational rehabilitation services to handicapped individuals.

(Authority: Sec. 311(a)(1) of the Act; 29 U.S.C. 777(a)(1))

(d) *Special Projects and Demonstrations for Making Recreational Activities Accessible to Handicapped Individuals.* States and public and other nonprofit agencies and organizations are eligible for assistance to support special projects and demonstrations for making recreational activities accessible to handicapped individuals.

(Authority: Sec. 311(a)(3) of the Act; 29 U.S.C. 777(a)(3))

(e) *Handicapped Migratory Agricultural Worker and Seasonal Farmworker Vocational Rehabilitation Service Projects.* State vocational rehabilitation agencies or local agencies administering vocational rehabilitation programs under written agreements with State agencies are eligible for assistance to support projects for providing vocational rehabilitation services to handicapped migratory agricultural workers or seasonal farmworkers.

(Authority: Sec. 312 of the Act; 29 U.S.C. 777(b))

(f) *Projects for Initiating Special Recreation Programs for Handicapped Individuals.* State and public nonprofit agencies and organizations are eligible for assistance to support projects for initiating special recreation programs for handicapped individuals.

(Authority: Sec. 316 of the Act; 29 U.S.C. 777(f))

(g) *Projects with Industry.* Any industrial, business, or commercial enterprise; labor organization; employer; industrial, or community trade association; rehabilitation facility; or other agency or organization with the capacity to arrange, coordinate, or conduct training and other employment programs and provide supportive services and assistance for handicapped individuals in a realistic work setting is eligible for assistance to support a project with industry.

(Authority: Sec. 621 of the Act; 29 U.S.C. 795(g))

(h) *Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth.* State and other public and nonprofit agencies and organizations are eligible for assistance under this program.

(Authority: Sec. 311(c) of the Act; 29 U.S.C. 777a(c))

[46 FR 5417, Jan. 19, 1981, as amended at 50 FR 9962, Mar. 12, 1985; 51 FR 3895, Jan. 30, 1986]

§ 369.3 What regulations apply to these programs?

The following regulations apply to the programs listed in § 369.1(b):

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(b) The regulations in this Part 369.

(c) The regulations in 34 CFR Parts 371, 372, 373, 374, 375, 376, 378, and 379, as appropriate.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

[51 FR 3895, Jan. 30, 1986]

§ 369.4 What definitions apply to these programs?

(a) The following definitions in 34 CFR Part 77 apply to the programs under Vocational Rehabilitation Service Projects—

Applicant
Application
Award
Budget Period
Department
EDGAR
Nonprofit
Profit
Project Period
Public
Secretary
Work of Art

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

(b) The following definitions also apply to programs under Vocational Rehabilitation Service Projects:

"Act" means the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended.

"*Blind*" or "*blind individual*" means a person who is blind within the meaning of the law relating to vocational rehabilitation in each State.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

"*Construction of a rehabilitation facility*" means:

(1) The construction of new buildings, the acquisition of existing buildings, or the expansion, remodeling, alteration or renovation of existing buildings which are to be utilized for rehabilitation facility purposes; or

(2) The acquisition of initial equipment of such new, newly acquired, newly expanded, newly remodeled, newly altered or newly renovated buildings.

(Authority: Sec. 7(1) of the Act; 29 U.S.C. 706(1))

"*Handicapped individual*" means an individual:

(1) Who has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

(2) Who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services, or for whom an extended evaluation of vocational rehabilitation potential is necessary to determine whether he or she might reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services;

(Authority: Sec. 7(7)(A) of the Act; 29 U.S.C. 706(7)(A))

"*Physical and mental restoration services*" means:

(1) Medical or corrective surgical treatment;

(2) Diagnosis and treatment for mental or emotional disorders by a physician skilled in the diagnosis and treatment of such disorders or by a psychologist licensed or certified in accordance with State laws and regulations;

(c) Dentistry;

(d) Nursing services;

(e) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(f) Convalescent or nursing home care;

(g) Drugs and supplies;

(h) Prosthetic, orthotic or other assistive devices including hearing aids essential to obtaining or retaining employment;

(i) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids, prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(j) Podiatry;

(k) Physical therapy;

(l) Occupational therapy;

(m) Speech and hearing therapy;

(n) Psychological services;

(o) Therapeutic recreation services;

(p) Medical or medically related social work services;

(q) Treatment of either acute or chronic medical complications and emergencies which are associated with or arise out of the provision of physical and mental restoration services; or which are inherent in the condition under treatment;

(r) Special services for the treatment of individuals suffering from end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(s) Other medical or medically related rehabilitation services, including art therapy, dance therapy, music therapy and psychodrama.

(Authority: Sec. 103(a)(4) of the Act; 29 U.S.C. 723(a)(4))

"*Physical or mental disability*" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

(Authority: Sec. 7(7) of the Act; 29 U.S.C. 706(7))

"*Rehabilitation facility*" means a facility which is operated for the primary purpose of providing vocational rehabilitation services to handicapped individuals, and which provides singly or in combination one or more of the following services for handicapped individuals:

(1) Vocational rehabilitation services, including under one management, medical, psychiatric, psychological, social, and vocational services;

(2) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(3) Prevocational conditioning or recreational therapy;

(4) Physical and occupational therapy;

(5) Speech and hearing therapy;

(6) Psychological and social services;

(7) Evaluation of rehabilitation potential;

(8) Personal and work adjustment;

(9) Vocational training with a view toward career advancement (in combination with other rehabilitation services);

(10) Evaluation or control of specific disabilities;

(11) Orientation and mobility services and other adjustment services to blind individuals; and

(12) Transitional or extended employment for those handicapped individuals who cannot be readily absorbed in the competitive labor market.

(Authority: Sec. 7(11) of the Act; 29 U.S.C. 706(11))

"*Reservation*" means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Authority: Sec. 130(e) of the Act; 29 U.S.C. 750(e))

"*Severely handicapped individual*" means a handicapped individual:

(1) Who has a severe physical or mental disability which seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, work tolerance, or work skills) in terms of employability; and

(2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

(Authority: Sec. 7(13) of the Act; 29 U.S.C. 706(13))

"*State agency*" means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of blind individuals.

(Authority: Sec. 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

"*State plan*" means the State plan for vocational rehabilitation services. (34 CFR Part 361)

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

"*State unit,*" "*State vocational rehabilitation unit*" or "*designated State unit*" means either:

(1) The State agency vocational rehabilitation bureau, division, or other organizational unit which is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of handicapped individuals and which is responsible for the administration of the vocational rehabilitation program of the State agency; or

(2) The independent State commission, board, or other agency which has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Authority: Sec. 7(3) of the Act 29; U.S.C. 706(3))

"*Substantial handicap to employment*" means that a physical or mental disability (in light of attendant medical, psychological, vocational, educational, and other related factors) impedes an individual's occupational performance by preventing his obtaining, retaining, or preparing for employment consistent with his capacities and abilities.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

"*Vocational rehabilitation services*" when provided to an individual, means:

(i) Evaluation of vocational rehabilitation potential, including diagnostic and related services incidental to the determination of eligibility for, and the nature and scope of services to be provided;

(ii) Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout a handicapped individual's program of services, and referral necessary to help handicapped individuals secure needed services from other agencies;

(iii) Physical and mental restoration services, necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive;

(iv) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials;

(v) Maintenance;

(vi) Transportation;

(vii) Services to members of a handicapped individual's family when necessary to the vocational rehabilitation of the handicapped individual;

(viii) Interpreter services and note-taking services for the deaf, including tactile interpreting for deaf-blind individuals;

(ix) Reader services, rehabilitation teaching services, note-taking services, and orientation and mobility services for the blind;

(x) Telecommunications, sensory and other technological aids and devices;

(xi) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement and other appropriate public service employment;

(xii) Placement in suitable employment;

(xiii) Post-employment services necessary to maintain suitable employment;

(xiv) Occupational licenses, including any license, permit or other written authorization from any governmental unit to be obtained in order to enter an occupation or enter a small business, tools, equipment, initial stocks (including livestock) and supplies; and

(xv) Other goods and services which can reasonably be expected to benefit a handicapped individual in terms of employability.

(Authority: Sec. 103(a) of the Act; 29 U.S.C. 723(a))

"*Vocational rehabilitation services*" when provided for the benefit of groups of individuals, also means:

(1) In the case of any type of small business enterprise operated by severely handicapped individuals under the supervision of the State unit, management services, and supervision and acquisition of vending facilities or other equipment, and initial stocks and supplies;

(2) The establishment of a rehabilitation facility;

(3) The construction of a rehabilitation facility;

(4) The provision of other facilities and services, including services provided at rehabilitation facilities, which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized written rehabilitation program of any one handicapped individual;

(5) The use of existing telecommunications systems; and

(6) The use of services providing recorded material for blind persons and captioned films or video cassettes for deaf persons.

(Authority: Sec. 103(b) of the Act; 29 U.S.C. 723(b))

"*Workshop*" means a rehabilitation facility, or that part of a rehabilitation facility, engaged in production or service operation for the primary purpose of providing gainful employment as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist.

(Authority: Secs. 7(11) and 12(c) of the Act; 29 U.S.C. 706(11) and 711(c))

[46 FR 5417, Jan. 19, 1981, as amended at 50 FR 38630, Sept. 23, 1985]

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

§ 369.20 What are the application procedures for these programs?

The Secretary gives the appropriate State vocational rehabilitation unit an opportunity to review and comment on applications submitted from within the State that it serves. The procedures to be followed by the applicant and the State are in EDGAR §§ 75.155–75.159.

(Authority: Sec. 12)(c) of the Act; 29 U.S.C. 711(c))

Subpart D—How Does the Secretary Make a Grant?

§ 369.30 How does the Secretary evaluate an application?

§ 369.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of general selection criteria in § 369.31 and specific selection criteria in 34 CFR Parts 371, 372, 373, 374, 375, 376, 378, and 379. The maximum possible score for each complete criterion under each Vocational Rehabilitation Service Project category is stated in parentheses in §§ 71.30, 372.30, 373.30, 374.30, 375.30, 376.31, 378.30, and 379.30. The number of points awarded under each criterion depends on how well the application meets all the elements under that criterion.

(b) The Secretary awards up to 100 possible points for these selection criteria.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

[46 FR 5417, Jan. 19, 1981, as amended at 51 FR 3895, Jan. 30, 1986]

§ 369.31 What general selection criteria does the Secretary use in reviewing an application?

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Handicapped persons;

(B) The elderly;

(C) Women; and

(D) Members of racial or ethnic minority groups;

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of key personnel proposed for the project;

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this criterion will commit to the project; and

(iv) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Handicapped persons;

(B) The elderly;

(C) Women; and

(D) Members of racial or ethnic minority groups.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities;

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and to the extent possible, are objective, and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.32 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria listed in § 369.31 and 34 CFR Parts 371, 372, 373, 374, 375, 376, 378, and 379, the Secretary, in making awards under these programs, considers such factors as—

(a) The geographical distribution of projects in each program category throughout the country; and

(b) The past performance of the applicant in carrying out similar activities under previously awarded grants, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices and attainment of established project objectives.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(a)).

[46 FR 5417, Jan. 19, 1981, as amended at 51 FR 3895, Jan. 30, 1986]

Subpart E—What Conditions Must Be Met by a Grantee?

§§ 369.40—369.41 [Reserved]

§ 369.42 What special requirements affect provision of services to handicapped individuals?

Vocational rehabilitation services provided in projects assisted under these programs must be provided in the same manner as services provided under the State plan for vocational rehabilitation services under 34 CFR Part 361.

(Authority: Sec. 306(h) of the Act; 29 U.S.C. 776(h))

§ 369.43 What are the affirmative action plan requirements affecting grantees?

A recipient of Federal assistance must develop and implement an affirmative action plan to employ and advance in employment qualified handicapped individuals. This plan must provide for specific action steps, timetables, and complaint and enforcement procedures necessary to assure affirmative action.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.44 What are the special requirements for projects that involve construction?

(a) A project which involves construction (the construction of new buildings and the acquisition, expansion, remodeling, alteration, and renovation of existing buildings) under these programs must meet the following requirements in addition to those requirements specified in 34 CFR 75.600–75.615:

(1) Plans and specifications must be approved by the Architectural and Transportation Barriers Compliance Board.

(2) The grantee must ensure that the facility will be used as a public or nonprofit facility for at least 20 years after completion of the project;

(3) The grantee must assure that Federal funds are used only for the purposes for which the funds were provided; and

(4) The grantee must operate and maintain the facility in accordance with applicable Federal, State, and local requirements for the maintenance and operation of rehabilitation facilities.

(b) The construction of a rehabilitation facility which is primarily a workshop may include the construction of residential accommodations for use in connection with the rehabilitation of handicapped individuals if it is necessary to the effective operation of the facility.

(c) Federal financial participation is not available for the costs of offsite improvements or for the construction of any facility used for religious worship or sectarian activity.

(Authority: Secs. 12(c) and 306 of the Act; 29 U.S.C. 711(c) and 776)

§ 369.45 What wage and hour standards apply to workshops?

All applicable Federal and State wage and hour standards must be observed in projects carried out in workshops.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.46 What are the special requirements pertaining to the membership of project advisory committees?

When an advisory committee is established under a project, its membership must include handicapped persons or other representatives of handicapped individuals and other individuals to be assisted within the project, providers of services, and other appropriate individuals.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.47 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any project under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The use of information and records concerning individuals must be limited only to purposes directly connected with the project, including project evaluation activities. This information may not be disclosed, directly or indirectly, other than in the administration of the project unless the consent of the agency providing the information and the individual to whom the information applies, or his or her representative, have been obtained in writing. The Secretary or other Federal or State officials responsible for enforcing legal requirements have access to this information without written consent being obtained. The final product of the project may not reveal any personal identifying information without written consent of the individual or his or her representative.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 369.48 What are the special requirements affecting the collection of data from State agencies?

When the collection of data is necessary either from handicapped individuals being served by two or more State agencies or from employees of two or more of these agencies, the project director must submit requests for the data to appropriate representatives of the affected agencies, as determined by the Secretary. This requirement also applies to employed project staff and individuals enrolled in courses of study supported under this part.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

PART 370—CLIENT ASSISTANCE PROGRAM

Subpart A—General

Sec.

370.1 What is the Client Assistance Program?
370.2 Who is eligible for an award under the Client Assistance Program?
370.3 What regulations apply to the Client Assistance Program?
370.4 What definitions apply to the Client Assistance Program?
370.5—370.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

370.10 What kinds of activities does the Secretary assist under this program?
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Subpart C—How Does One Apply for a Grant?

370.20 What must be included in a request for a grant?
370.21—370.29 [Reserved]

Subpart D—How Does the Secretary Make a Grant?

370.30 How does the Secretary allocate funds?
370.31 How does the Secretary reallocate funds?
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Subpart E—What Conditions Must Be Met by a Grantee?

370.40 What are allowable costs?

Sec.

370.41 What conflict of interest provision applies to program employees?
370.42 What access must the program director be afforded to policymaking and administrative personnel?
370.43 What requirement applies to the use of mediation procedures?
370.44 What reporting requirement applies to each designated agency?
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370.47 When must grant funds be obligated?
370.48—370.49 [Reserved]

AUTHORITY: Sec. 112 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 732), except where otherwise noted.

SOURCE: 50 FR 9962, Mar. 12, 1985, unless otherwise noted.

Subpart A—General

§ 370.1 What is the Client Assistance Program?

The purpose of this program is to provide assistance in informing and advising clients and client applicants of all available benefits under the Act and, when requested by clients and client applicants, assist them in their relationships with projects, programs, and facilities providing services to them under the Act.

(Authority: Sec. 112(a) of the Act; 29 U.S.C. 732(a))

§ 370.2 Who is eligible for an award under the Client Assistance Program?

(a) Any State, through its Governor, is eligible for an award under this part.

(b) The Governor of each State shall designate a public or private agency to conduct the State's client assistance program under this part.

(c) Except as provided in paragraph (d) of this section, the Governor shall designate an agency which is independent of any agency which provides treatment, services, or rehabilitation to individuals under the Act.

(d) The Governor may designate an agency which provides treatment, services, or rehabilitation to handicapped individuals under the Act if, at any time before February 22, 1984, there was an agency in the State that both—

(1) Served as a client assistance agency under section 112 of the Act by directly carrying out a client assistance program; and

(2) Was, at the same time, a grantee under section 112 or any other provision of the Act.

(e) The program conducted by the designated agency must have the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of rights of handicapped individuals who are receiving treatments, services, or rehabilitation under the Act within the State.

(Authority: Sec. 112 (a) and (c) of the Act; 29 U.S.C. 732 (a) and (c))

§ 370.3 What regulations apply to the Client Assistance Program?

The following regulations apply to this program:

(a) The regulations in this Part 370.

(b) The regulations in 34 CFR 369.43 and 369.46 through 369.48, relating to various conditions to be met by grantees.

(c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR—

(1) Part 74 (Administration of Grants);

(2) Part 76 (State-Administered Programs), except for——

(i) § 76.103;

(ii) §§ 76.705 and 76.706;

(iii) § 76.734; and

(iv) §§ 76.740 and 76.741;

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(Authority: Sec. 112(c) of the Act; 29 U.S.C. 732(c))

§ 370.4 What definitions apply to the Client Assistance Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Award

EDGAR
Fiscal year
Private
Public
Secretary
State

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"*Act*" means the Rehabilitation Act of 1973, as amended.

"*Client or client applicant*" means an individual receiving or seeking services under the Act.

"*Designated agency*" means the agency designated by the Governor under § 370.2 to conduct a client assistance program under this part.

"*Governor*" means the chief executive of the State.

(Authority: Sec. 112(e)(3)(B) of the Act; 29 U.S.C. 732(e)(3)(B))

(NOTE.—The funds made available to a State under this program which are transferred to a designated agency do not comprise a subgrant as that term is defined in 34 CFR 77.1. The designated agency is not, therefore, a subgrantee as that term is defined in that section.)

(Authority: Sec. 112 of the Act; 29 U.S.C. 732)

§§ 370.5—370.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 370.10 What kinds of activities does the Secretary assist under this program?

Funds made available under this part may be used for activities consistent with the purpose of this program, including—

(a) Helping clients or client applicants to understand rehabilitation services programs under the Act;

(b) Advising clients or client applicants of all benefits available to them through rehabilitation programs authorized under the Act and related Federal and State assistance programs, and their rights and responsibilities in connection with those benefits;

(c) Otherwise assisting clients and client applicants in their relationships with projects, programs, and facilities providing rehabilitation services under the Act;

(d) Helping clients or client applicants by pursuing, or assisting them in pursuing, legal, administrative, and other available remedies when necessary to ensure the protection of their rights under the Act;

(e) Advising State and other agencies of identified problem areas in the delivery of rehabilitation services to handicapped individuals and suggesting methods and means of improving agency performance; and

(f) Providing information to the public concerning the client assistance program.

(Authority: Sec. 112 of the Act; 29 U.S.C. 732)

§§ 370.12—370.19 [Reserved]

Subpart C—How Does One Apply for a Grant?

§ 370.20 What must be included in a request for a grant?

(a) Each State seeking assistance under this part shall submit to the Secretary, in writing—

(1) The name of the designated agency; and

(2) An assurance that the designated agency meets the independence requirement of § 370.2(c) or that the State is excepted from that requirement under § 370.2(d).

(b)(1) Each State shall submit to the Secretary an assurance that the client assistance program for which it seeks funds under this part has the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of rights of handicapped individuals who are receiving treatments, services, or rehabilitation under the Act within the State.

(2) The authority to pursue remedies described in paragraph (b)(1) of this section must include the authority to pursue those remedies against the State vocational rehabilitation agency and other appropriate State agencies. The designated agency meets this requirement if it has the authority to pursue those remedies either on its own behalf or by obtaining neces-

sary services, such as legal representation, from outside sources.

(c) Each State shall also submit to the Secretary assurances that—

(1) The State will advise all clients and client applicants of the existence of the client assistance program, the services provided by the program, and how to contact the program;

(2) The client assistance program will meet each of the requirements of §§ 370.41 through 370.47; and

(3) The client assistance program will provide the Secretary the information needed to conduct evaluations and studies of the program, such as the evaluation described in section 112(h) of the Act.

(d) Each State shall specify the amount of funds requested under this part.

(Authority: Sec. 112(f) of the Act; 29 U.S.C. 732(f))

(Approved by the Office of Management and Budget under control number 1820-0520)

§§ 370.21—370.29 [Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 370.30 How does the Secretary allocate funds?

(a)(1) The Secretary allocates the funds available under this part for any fiscal year to the States on the basis of the relative population of each State, except that the Secretary allocates at least $50,000 to each State.

(2) For the purposes of paragraph (a)(1) of this section, the term "State" does not include American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(b) The Secretary allocates $30,000 each to American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(c) Upon approval of a State's request for assistance under this part, the Secretary pays to the Governor of each State, from that State's allotment under paragraph (a) or (b) of this section, the amount specified in the State's approved request.

(d) The Governor may request that the Secretary transfer the State's grant directly to the designated agency. In such a case, however, the State remains the grantee.

(e) Both the State and the designated agency are accountable to the Secretary for the proper use of funds made available under this part.

(Authority: Sec. 112(e)(1), (3) of the Act; 29 U.S.C. 732(e)(1), (3))

§ 370.31 How does the Secretary reallocate funds?

The Secretary reallocates funds in accordance with section 112(e)(2) of the Act.

(Authority: Sec. 112(e)(2) of the Act; 29 U.S.C. 732(e)(2))

§§ 370.32—370.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 370.40 What are allowable costs?

In addition to those allowable costs established in EDGAR, and consistent with the program activities listed in § 370.10, the cost of client, client applicant, or attendant travel in connection with the provision of assistance is also allowable under this program.

(Authority: Sec. 112 of the Act; 29 U.S.C. 732)

§ 370.41 What conflict of interest provision applies to program employees?

(a) No program employee may, while so employed, serve as a staff member of or consultant to, or receive benefits of any kind directly or indirectly from, any other rehabilitation project, program, or facility receiving assistance under the Act in the State.

(b) This section does not prohibit an individual receiving a traineeship under section 304 of the Act from serving with a program under this part during the traineeship.

(Authority: Sec. 112(g)(1) of the Act; 29 U.S.C. 732(g)(1))

§ 370.42 What access must the program director be afforded to policymaking and administrative personnel?

The program director must be afforded reasonable access to policymaking and administrative personnel in the State and local rehabilitation programs, projects, or facilities. One way in which the program director may be provided that access would be to include the director among the individuals to be consulted on matters of general policy development and implementation, as required by 34 CFR 361.18.

(Authority: Sec. 112(g)(2) of the Act; 29 U.S.C. 732(g)(2))

§ 370.43 What requirement applies to the use of mediation procedures?

(a) Each designated agency shall implement procedures designed to ensure that, to the maximum extent possible, mediation procedures are used before resorting to administrative or legal remedies.

(b) As used in this section, "mediation" includes good faith negotiations, but this section does not require the use of a third party before resorting to administrative or legal remedies.

(Authority: Sec. 112(g)(3) of the Act; 29 U.S.C. 732(g)(3))

§ 370.44 What reporting requirement applies to each designated agency?

Each designated agency shall submit to the Secretary an annual report on the operation of its program during the previous year, including a summary of the work done and the uniform statistical tabulation of all cases handled by the program.

(Authority: Sec. 112(g)(4) of the Act; 29 U.S.C. 732(g)(4))

§ 370.45 What limitation applies to the pursuit of legal remedies?

A designated agency may not bring any class action in carrying out its responsibilities under this part.

(Authority: Sec. 112(d) of the Act; 29 U.S.C. 732(d))

§ 370.46 What consultation requirement applies to the Governor?

In designating a client assistance agency under § 370.2 and in carrying out the other provisions of this part, the Governor shall consult with the director of the State vocational rehabilitation agency (or, in States with both a general agency and an agency for the blind, the directors of both agencies), the head of the developmental disability protection and advocacy agency, and representatives of professional and consumer organizations serving handicapped individuals in the State.

(Authority: Sec. 112(c)(2) of the Act; 29 U.S.C. 732(c)(2))

§ 370.47 When must grant funds be obligated?

(a) Each designated agency must obligate funds received under this part by the end of the fiscal year for which they are made available.

(b) The designated agency is considered a State for purposes of 34 CFR 76.707.

(Authority: Sec. 112 of the Act; 29 U.S.C. 732)

§§ 370.48—370.49 [Reserved]

PART 371—HANDICAPPED AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICE PROJECTS

Subpart A—General

Sec.

371.1 What is the Handicapped American Indian Vocational Rehabilitation Service Projects Program?
371.2 Who is eligible for assistance under this program?
371.3 What regulations apply to this program?
371.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

371.10 What types of projects are authorized under this program?

Sec.
Subpart C—How Does One Apply for a Grant?

371.20 What are the application procedures under this program?
371.21 What are the special application requirements related to the State plan Program?

Subpart D—How Does the Secretary Make a Grant?

371.30 What selection criteria does the Secretary use under this program?
371.31 How are grants awarded?

Subpart E—What Conditions Apply to a Grantee Under this Program?

371.40 What are the matching requirements?
371.41 What are allowable costs?
371.42 How are services to be administered under this program?
371.43 What other special conditions apply to this program?

AUTHORITY: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750, unless otherwise noted.

SOURCE: 46 FR 5423, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 371.1 What is the Handicapped American Indian Vocational Rehabilitation Service Projects Program?

This program is designed to provide vocational rehabilitation services to handicapped American Indians who reside on Federal or State reservations in order to prepare them for suitable employment.

(Authority: Sec. 130(a) of the Act; 29 U.S.C. 750(a))

§ 371.2 Who is eligible for assistance under this program?

Applications may be made only by the governing bodies of Indian tribes located on Federal and State reservations.

(Authority: Sec. 130(a) of the Act; 29 U.S.C. 750(a))

§ 371.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 369;

(b) The regulations in this Part 371.

(Authority: Sec. 130 of the Act; 29 U.S.C. 750)

§ 371.4 What definitions apply to this program?

(a) The definitions in 34 CFR Part 369 apply to this program;

(b) The following definitions also apply specifically to this program—

(1) "American Indian" means a person who is a member of an Indian tribe.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

(2) "Governing bodies of Indian tribes" means those duly elected or appointed representatives of an Indian tribe or of an Alaskan native village. These representatives must have the authority to enter into contracts, agreements, and grants on behalf of their constituency.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

(3) "Indian tribe" means any Federal or State Indian band, rancheria, pueblo, colony, and community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act).

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

(4) "Reservation" means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act.

(Authority: Secs. 12(c) and 130(e) of the Act; 29 U.S.C. 711(c) and 750(e))

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 371.10 What types of projects are authorized under this program?

The Handicapped American Indian Vocational Rehabilitation Service Projects Program provides financial assistance for the establishment and operation of tribal vocational rehabilitation service programs for handicapped American Indians who reside on Federal or State reservations.

(Authority: Sec. 130(a) of the Act; 29 U.S.C. 750(a))

Subpart C—How Does One Apply for a Grant?

§ 371.20 What are the application procedures for this program?

In the development of an application, a governing body is required to consult with the designated State unit or the designated State units of the State or States in which vocational rehabilitation services are to be provided.

(Authority: Sec. 130(b) of the Act; 29 U.S.C. 750(b))

§ 371.21 What are the special application requirements related to the State plan program?

Each applicant under this program must provide evidence that—

(a) Effort will be made to provide a broad scope of vocational rehabilitation services in a manner and at a level of quality at least comparable to those services provided by the designated State unit under 34 CFR Part 361.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

(b) All decisions affecting eligibility for and the nature and scope of vocational rehabilitation services to be provided, and the provision of these services, will be made by the tribal vocational rehabilitation program through its vocational rehabilitation unit and will not be delegated to another agency or individual.

(Authority: Secs. 12(c) and 101(a) of the Act; 29 U.S.C. 711(c) and 721(a))

(c) Priority in the delivery of vocational rehabilitation service will be given to those handicapped American Indians who are the most severely handicapped.

(Authority: Secs. 12(c) and 101(a)(5) of the Act; 29 U.S.C. 711(c) and 721(a)(5))

(d) An order of selection of handicapped individuals to be served under the program will be specified if services cannot be provided to all eligible handicapped American Indians who apply.

(Authority: Secs. 12(c) and 101(a)(5) of the Act; 29 U.S.C. 711(c) and 721(a)(5))

(e) All vocational rehabilitation services will be provided according to an individualized written rehabilitation program which has been developed jointly by the representative of the service providing organization and each handicapped American Indian being served.

(Authority: Secs. 12(c) and 101(a)(9) of the Act; 29 U.S.C. 711(c) and 721(a)(9))

(f) Handicapped American Indians living on Federal or State reservations where service programs are being carried out under this Part will have an opportunity to participate in matters of general policy development and implementation affecting vocational rehabilitation service delivery on the reservation.

(Authority: Secs. 12(c) and 101(a)(18) of the Act; 29 U.S.C. 711(c) and 721(a)(18))

(g) Cooperative working arrangements will be developed with the designated State unit, or designated State units, as appropriate, which are providing vocational rehabilitation services to other handicapped individuals who reside in the State or States being served.

(Authority: Secs. 12(c) and 101(a)(11) of the Act; 29 U.S.C. 711(c) and 721(a)(11))

(h) Any similar benefits available to handicapped American Indians under any other program which might meet in whole or in part the cost of any vocational rehabilitation service will be fully considered in the provision of vocational rehabilitation services in accordance with 34 CFR Part 361.

(Authority: Secs. 12(c) and 101(a)(8) of the Act; 29 U.S.C. 711(c) and 721(a)(8))

(i) Any handicapped American Indian applicant or recipient of services who is dissatisfied with any action with regard to the provision or denial of a vocational rehabilitation service under this program may file a request for an administrative review of the action by a member of the supervisory staff of the organization administering the program. If the client is still dissatisfied, he or she may request a fair hearing before the project administrator, or the next higher level in the administrative structure of the tribal organization.

(Authority: Secs. 12(c) and 102(d) of the Act; 29 U.S.C. 711(c) and 722(d))

(j) Minimum standards will be established for facilities and providers of service which will be comparable to the standards set by the designated State unit or designated State units in the State or States in which the program is to be provided; and

(Authority: Secs. 12(c) and 101(a)(6) of the Act; 29 U.S.C. 711(c) and 721(a)(12))

(k) Maximum use will be made of public or other vocational or technical training facilities or other appropriate community resources.

(Authority: Secs. 12(c) and 101(a)(12) of the Act; 29 U.S.C. 711(c) and 721(a)(12))

Subpart D—How Does the Secretary Make a Grant?

§ 371.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (30 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (20 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points) The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Evidence of need for project* (25 Points).

(1) The Secretary reviews each application for information that shows that the need for the special project has been adequately justified.

(2) The Secretary looks for information that shows—

(i) The extent to which vocational rehabilitation services are provided by the State vocational rehabilitation unit to handicapped American Indians residing on reservations;

(ii) The extent to which the provision of vocational rehabilitation services through a tribal rehabilitation service program would expand or improve rehabilitation services for handicapped American Indians.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

§ 371.31 How are grants awarded?

To the extent that funds have been appropriated under this program, the Secretary approves all applications which meet acceptable standards of program quality. If any application is not approved because of deficiencies in proposed program standards, the Secretary provides technical assistance to the applicant Indian tribe with respect to any areas of the proposal which were judged to be deficient.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

Subpart E—What Conditions Apply to A Grantee Under This Program?

§ 371.40 What are the matching requirements?

The Federal share may not be more than 90 percent of the total cost of the project.

(Authority: Secs. 12(c) and 130(a) of the Act; 29 U.S.C. 711(c) and 750(c))

§ 371.41 What are allowable costs?

(a) In addition to those allowable costs established in EDGAR §§ 75.530–75.534, the following items are allowable costs under this program—

(1) Expenditures for the provision of vocational rehabilitation services and for the administration, including staff development, of a program of vocational rehabilitation services.

(2) Expenditures for services reflecting the cultural background of the American Indians being served, including treatment provided by native healing practitioners who are recognized

as such by the tribal vocational rehabilitation program when the services are necessary to assist the handicapped individual to achieve his or her vocational rehabilitation objective.

(b) Expenditures may not be made under this program to cover the costs of providing vocational rehabilitation services to handicapped individuals not residing on Federal or State reservations.

(Authority: Secs. 12(c) and 130(a) of the Act; 29 U.S.C. 711(c) and 750(a))

§ 371.42 How are services to be administered under this program?

A governing body may provide the vocational rehabilitation services directly or it may contract or otherwise enter into an agreement with a designated State unit, a rehabilitation facility, or another agency to assist in the implementation of the vocational rehabilitation service program for handicapped American Indians. A governing body may also enter into an intertribal arrangement with governing bodies of other Indian tribes for carrying out a project which serves more than one Indian tribe. In any case, to the maximum extent feasible, the vocational rehabilitation service program must be comparable in type and quality to that provided by the State unit or units in the State or States in which the program is being carried out and each tribal program must be administered by a special tribal organizational unit for vocational rehabilitation.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

§ 371.43 What other special conditions apply to this program?

(a) Any handicapped American Indian who is eligible for service under this program but who wishes to be provided service by the designated State unit must be referred to the State unit for such services.

(b) Preference in employment in connection with the provision of vocational rehabilitation services under this section must be given to American Indians, with a special priority being given to handicapped American Indians.

(c) The provisions of sections 5, 6, 7, and 102(a) of the Indian Self-Determination and Education Assistance Act also apply under this program. These provisions relate to grant reporting and audit requirements, maintenance of records, access to records, availability of required reports and information to Indian people served or represented, repayment of unexpended Federal funds, criminal activities involving grants, penalties, wage and labor standards, preference requirements for American Indians in the conduct and administration of the grant, and requirements affecting requests of tribal organizations to enter into contracts. For purposes of applying these requirements to this program, the Secretary carries out those responsibilities assigned to the Secretary of Interior.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

PART 372—COMPREHENSIVE REHABILITATION CENTERS

Subpart A—General

Sec.

372.1 What is the Comprehensive Rehabilitation Centers Program?
372.2 Who is eligible for assistance under this program?
372.3 What regulatios apply to this program?
372.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

372.10 What types of projects are authorized under this program?

Subpart C—How Does One Apply for a Grant?

372.20 What are the special application requirements for this program?

Subpart D—How Does the Secretary Make a Grant?

372.30 What selection criteria does the Secretary use?
372.32 Is there a priority for the use of existing facilities?

Sec.

Subpartart E—What Conditions Must Be Met by a Grantee?

372.40 What are the matching requirements?
372.41 What are allowable costs?
372.42 How are services to be administered under this program?
372.43 What special conditions apply under this program to projects that involve construction?

AUTHORITY: Secs. 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775, unless otherwise noted.

SOURCE: 46 FR 5425, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 372.1 What is the Comprehensive Rehabilitation Center Program?

This program is designed to establish or operate comprehensive rehabilitation centers which serve primarily as centers for the development, delivery, and coordination of vocational rehabilitation services and other services needed by handicapped persons in the community.

(Authority: Sec. 305(a) of the Act; 29 U.S.C. 775(a))

§ 372.2 Who is eligible for assistance under this program?

(a) Applications may be made by State vocational rehabilitation units.

(b) A State vocational rehabilitation unit which has been awarded a grant under this program may award a subgrant to a unit of general purpose local government or to any other public or nonprofit private agency or organization or enter into a contract with agencies or organizations in the community.

(Authority: Secs. 305(a), (c) of the Act; 29 U.S.C. 775(a), (c))

§ 372.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 369.

(b) The regulations in this Part 372.

(Authority: Sec. 305 of the Act; 29 U.S.C. 775)

§ 372.4 What definitions apply to this program?

(a) The definitions in 34 CFR Part 369 apply to this program.

(b) The following definitions also apply specifically to this program—

(1) "Comprehensive rehabilitation center" means a facility or group of facilities which serves as a focal point within a community for the development and delivery of services for handicapped persons and other persons.

(Authority: Secs. 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

(2) "Handicapped person" means an individual of any age who has a physical or mental disability.

(Authority: Secs. 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 372.10 What types of projects are authorized under this program?

A comprehensive rehabilitation center established or operated under this program may function as a community information and referral resources center for handicapped persons and for other public and other nonprofit agencies in the community which serve handicapped persons. A comprehensive rehabilitation center may, in addition, directly provide a broad range of vocational rehabilitation, health, educational, social, and recreational services to handicapped persons.

(Authority: Sec. 305(a) of the Act; 29 U.S.C. 775)

Subpart C—How Does One Apply for a Grant?

§ 372.20 What are the special application requirements for this program?

The need for the establishment of a comprehensive rehabilitation center must be identified by the State unit in the State planning for rehabilitation facilities required under 34 CFR Part 361 before an application may be submitted under this program.

(Authority: Secs. 12(c), 101(a)(15) and 305 of the Act; 29 U.S.C. 711(c), 721(a)(15) and 775)

Subpart D—How Does the Secretary Make a Grant?

§ 372.30 What selection criteria does the Secretary use?

(a) *Plan of operation* (35 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (15 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 Points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Evidence of need* (25 Points).

(1) The Secretary reviews each application for information that shows that the need for the comprehensive rehabilitation center has been adequately justified.

(2) The Secretary looks for information that shows that the need for the comprehensive rehabilitation center has been established in terms of services already available in the community and includes an assessment of community information, referral and service delivery needs not being adequately met.

(Authority: Secs. 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

§ 372.32 Is there a priority for the use of existing facilities?

The Secretary gives priority in awarding grants for establishing or operating comprehensive rehabilitation centers at facilities which are already in operation.

(Authority: Secs. 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775).

Subpart E—What Conditions Must Be Met by a Grantee?

§ 372.40 What are the matching requirements?

(a) The Federal share of any grant awarded to a designated State unit may not be more than 80 percent of the total costs of the project.

(b) No subgrant or contract awarded by a State unit to a general purpose local government unit, a public or other nonprofit agency or organization, or other agencies or organizations may pay more than 80 percent of the total cost of establishing or operating a comprehensive rehabilitation center under this program.

(Authority: Secs. 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

§ 372.41 What are allowable costs?

In addition to these allowable costs established in EDGAR §§ 75.530–75.534, the following items are allowable costs under this program—

(a) Salaries of additional professional and technical personnel required to operate a comprehensive rehabilitation center;

(b) Acquisition of equipment necessary for operating a center;

(c) Expansion, remodeling or alteration of an existing building when necessary to adapt it or increase its effectiveness for use as a comprehensive rehabilitation center;

(d) Leasing of a facility to serve as a comprehensive rehabilitation center; and

(e) Works of art in an amount not to exceed one percent of the total cost of the project when the expansion, remodeling or alteration of an existing building is involved.

(Authority: Secs. 12(c), 305, and 306 of the Act; 29 U.S.C. 711(c), 775, and 776)

§ 372.42 How are services to be administered under this program?

(a) Services may be provided within the comprehensive rehabilitation center directly by the agency or organization or the group of agencies or organizations which is operating the center or they may be provided by other agencies or organizations using either their own facilities or the facilities of the center;

(b) The facilities of the center are expected to be made available for recreational activities for handicapped persons;

(c) To the maximum extent possible, the center must provide upon request to other public and other nonprofit agencies, organizations, facilities and other entities in the community information services and technical assistance necessary to assist them in complying with the requirements of this Act, with special reference to the requirements under section 504 of the Act. Technical assistance includes both the maintenance of rosters of special support personnel available within the community such as interpreters for the deaf, readers for the blind, attendants, legal aid and advocacy personnel, and the coordination of referrals of these personnel;

(d) Any center established or operated under this program must be located in close proximity to the majority of the handicapped persons in the community to be served; and

(e) Information and referral services provided by a center must be fully coordinated with information and referral services provided by the State unit under the State plan for vocational rehabilitation services under 34 CFR Part 361 or by any other public or other nonprofit agency or organization in the community.

(Authority: Secs. 12(c) and 305 of the Act; 29 U.S.C. 711(c) and 775)

§ 372.43 What special conditions apply under this program to projects that involve construction?

New facilities are established through the expansion, remodeling, or alteration of an existing building only after it has been fully demonstrated that there are no existing facilities in the community with the potential for developing and delivering adequate services under this program. If the expansion, remodeling, or alteration of an existing building is involved, each facility must comply with the requirements specified under Part 369, and with any other requirements of the Department in effect concerning Federally assisted building design and construction activities.

(Authority: Secs. 12(c), 305, and 306 of the Act; 29 U.S.C. 711(c), 775, and 776)

PART 373—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING VOCATIONAL REHABILITATION SERVICES TO SEVERELY HANDICAPPED INDIVIDUALS

Subpart A—General

Sec.

373.1 What is the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals?

373.2 Who is eligible for assistance under this program?

373.3 What regulations apply to the program?

373.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

373.10 What types of projects are authorized under this program?

373.11 What specific activities must be supported under this program to provide services to blind individuals?

373.12 What specific activities must be supported under this program to provide services to deaf individuals?

373.14 What are Supported Employment demonstration projects?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

373.30 What selection criteria does the Secretary use under this program?

373.31 What selection criteria does the Secretary use for Supported Employment demonstration projects?

Subpart E—What conditions Must be Met by a Grantee?

373.40 What are the matching requirements?

373.41 What are allowable costs?

373.42 What special conditions apply under this program to projects that involve construction?

AUTHORITY: Secs. 12(c) and 311(a)(1) of the Act; 29 U.S.C. 711(c) and 777(a)(1), unless otherwise noted.

SOURCE: 46 FR 5427, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 373.1 What is the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals?

This program is designed to provide financial assistance to projects for expanding or otherwise improving vocational rehabilitation services and other rehabilitation services for severely handicapped individuals.

(Authority: Sec. 311(a) of the Act; 29 U.S.C. 777(a))

§ 373.2 Who is eligible for assistance under this program?

Applications may be made by States and public and other nonprofit agencies and organizations.

(Authority: Sec. 311(a) of the Act; 29 U.S.C. 777(a))

§ 373.3 What regulations apply to the program?

The following regulations apply to this program—

(a) 34 CFR Part 369;

(b) The regulations in this Part 373.

(Authority: Sec. 311 of the Act; 29 U.S.C. 777(a))

§ 373.4 What definitions apply to this program?

The definitions in 34 CFR Part 369 apply to this program.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 373.10 What types of projects are authorized under this program?

(a) Authorized activities under this program include carrying out special projects concerned with establishing programs and constructing facilities for expanding or otherwise improving vocational rehabilitation services and other rehabilitation services to handicapped individuals, especially those who are the most severely handicapped.

(b) Handicapped individuals served under this program include blind individuals, deaf individuals, and other groups of severely handicapped individuals, irrespective of age or vocational potential, identified each year by the Secretary and published in a notice in the FEDERAL REGISTER.

(Authority: Sec. 311(a) of the Act; 29 U.S.C. 777a(a))

[50 FR 38630, Sept. 23, 1985]

§ 373.11 What specific activities must be supported under this program to provide services to blind individuals?

Projects in which services are provided to blind individuals must—

(a) Demonstrate innovative methods of providing intensive rehabilitation services needed to rehabilitate blind individuals; or

(b) Provide mobility training services or comprehensive counseling services not otherwise available in the locality in which individuals served by the project reside; or

(c) Conduct coordinated rehabilitation service activities with other public or nonprofit agencies serving blind individuals in the same area.

(Authority: Sec. 311(a) of the Act; 29 U.S.C. 777(a))

[46 FR 5427, Jan. 19, 1981. Redesignated at 50 FR 38630, Sept. 23, 1985]

§ 373.12 What specific activities must be supported under this program to provide services to deaf individuals?

Projects in which services are provided to deaf individuals must—

(a) Demonstrate innovative methods of providing the specialized services needed to rehabilitate and make maximum use of the vocational potential of deaf individuals; or

(b) Conduct coordinated activities with other public and nonprofit agencies administering programs for deaf persons in the same area in order to expand or improve rehabilitation services for deaf individuals.

(Authority: Sec. 311(a) of the Act; 29 U.S.C. 777a)

[46 FR 5427, Jan. 19, 1981. Redesignated at 50 FR 38630, Sept. 23, 1985]

§ 373.14 What are Supported Employment demonstration projects?

(a) *Purpose.* The purpose of Supported Employment demonstration projects is to stimulate the development and provision of supported employment on a statewide basis for severely handicapped individuals who, because of the severity of their handicap, would not normally receive vocational rehabilitation services.

(b) *Definition.* "Supported employment", as used in this part, means paid work in a variety of integrated settings, particularly regular work sites, especially designed for severely handicapped individuals, irrespective of age or vocational potential—

(1) For whom competitive employment at or above the minimum wage has not traditionally occurred; and

(2) Who, because of their disability, need intensive ongoing post-employment support to perform in a work setting.

(c) *Authorized activities.* Under the Supported Employment demonstration program, the Secretary provides financial assistance for projects that may include—

(1) Program development, including program start-up costs, for new or existing community organizations and employers;

(2) Staff training;

(3) Program evaluation; and

(4) Program reorganization to convert existing programs to programs that offer supported employment services.

(d) *Restrictions on the use of funds.*

(1) Under this program the Secretary does not provide financial assistance for the ongoing delivery of direct supported employment services.

(2) A grantee must provide, on ensure the provision of, the ongoing delivery of those direct services needed by severely handicapped individuals in order for them to maintain employment. These supported employment services include—

(i) Job site training to prepare and enable the handicapped individual to perform work and maintain the job;

(ii) Ongoing supervision of the handicapped individual on the job;

(iii) Ongoing behavior management; and

(iv) Case management, including assistance to coordinate services from various sources.

(Authority: Sec. 311(a)(1) of the Act; 29 U.S.C. 777a(a)(1))

[46 FR 5427, Jan. 19, 1981, as amended at 50 FR 25407, June 18, 1985]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 373.30 What selection criteria does the Secretary use under this program?

The Secretary uses the criteria in this section to evaluate applications for all projects under this part, except for Supported Employment demonstration projects. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation* (20 points). The Secretary reviews each application in accordance with the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 points). The Secretary reviews each application in accordance with the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (10 points). The Secretary reviews each application in accordance with the criterion in § 369.31(c).

(d) *Evaluation plan* (5 points). The Secretary reviews each application in accordance with the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 points). The Secretary reviews each application in accordance with the criterion in § 369.31(e).

(f) *Service comprehensiveness* (20 points).

(1) The Secretary reviews each application for information that shows that the services to be provided within the project are comprehensive in scope.

(2) The Secretary looks for information that shows that—

(i) A broad range of vocational rehabilitation services and other rehabilitation services will be available to severely handicapped individuals within the project;

(ii) Services will be coordinated with those services provided by other appropriate community resources;

(g) *Relevance to State-Federal rehabilitation service program* (10 points).

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that—

(i) The project will be designed primarily for severely handicapped individuals being provided vocational rehabilitation services by State vocational rehabilitation units;

(ii) The State vocational rehabilitation unit will be actively involved in the carrying out of project activities and project linkages will be adequate to ensure appropriate outreach and client referral;

(iii) Job development, placement, and achieving an optimal vocational adjustment will be primary project emphases;

(iv) All similar benefits for which project clients might be eligible will be utilized.

(h) *Innovativeness of approach* (5 points).

(1) The Secretary reviews each application for information that shows the extent to which the project approach is innovative.

(2) The Secretary looks for information that shows that the approach to be used in providing vocational rehabilitation services and other rehabilitation services will be innovative and appropriate to the groups of severely handicapped individuals being served.

(i) *Utilization of project findings* (5 points).

(1) The Secretary reviews each application for information that shows the extent to which project findings might be utilized within the State rehabilitation service system.

(2) The Secretary looks for information that shows—

(i) The potential for project findings to be effectively utilized within the State vocational rehabilitation service system; and

(ii) The likelihood of the project activities being successfully replicated in other locations;

(j) *Likelihood of sustaining program* (5 points).

(1) The Secretary reviews each application for information that shows the likelihood of the service program being sustained after the termination of Federal grant support.

(2) The Secretary looks for information that shows that the applicant agency intends to continue to operate the service program after the termination of the project.

(Authority: Secs. 12(c) and 311 of the Act; 29 U.S.C. 711(c) and 777(a))

[50 FR 25407, June 18, 1985]

§ 373.31 What selection criteria does the Secretary use for Supported Employment demonstration projects?

The Secretary uses the criteria in this section to evaluate applications for Supported Employment demonstration projects. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points) The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel.* (10 points) The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness.* (10 points) The secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan.* (10 points) The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources.* (5 points) The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Capacity to achieve lasting statewide change.* (15 points) (1) The Secretary reviews each application for information that demonstrates the capacity of the applicant to achieve lasting statewide change in the provision of supported employment for handicapped individuals.

(2) The Secretary looks for information that shows—

(i) The applicant agency has responsibility for programs to be changed or is able to assure that program change will occur;

(ii) The project resources will be used to change how existing service funds are spent, not to supplant those funds; and

(iii) A sufficient number of service programs and work opportunities can be developed within the project period to achieve statewide change.

(g) *Project design.* (20 points) (1) The Secretary reviews each application for information that shows the quality of the project design and approach.

(2) The Secretary looks for information that shows—

(i) The applicant has clearly defined the services and service delivery system which will result from the project and has analyzed in detail how these differ from current services and the current service delivery systems;

(ii) All relevant barriers to implementing the proposed statewide change are identified and appropriate strategies are proposed for eliminating those barriers;

(iii) The project will employ a multifaceted and systematic approach for achieving project objectives, which may include activities such as dissemination of information, training and technical assistance, start-up of new programs, and development of incentives for employer participation; and

(iv) The project is designed to achieve a range of service approaches that are appropriate for the variety of employment opportunities in the State.

(h) *Participation and coordination.* (15 points) (1) The Secretary reviews each application for information that shows coordination with and participation of all affected groups and agencies.

(2) The Secretary reviews each application for information that demonstrates that—

(i) Handicapped individuals and parents of handicapped individuals participate in project decision-making;

(ii) Potential employers of handicapped individuals are involved in project planning and decision-making; and

(iii) All State agencies whose cooperation and participation are necessary for statewide implementation of supported employment projects are actively collaborating in project management. These agencies may include those responsible for secondary special education, vocational rehabilitation, and day services for individuals with developmental disabilities, as well as private agencies and rehabilitation facilities.

(i) *Impact on other States.* (5 points) (1) The Secretary reviews each application for information that shows the impact the proposed project will have on other States.

(2) The Secretary looks for information that shows—

(i) The approach to be used can be applied to other States; and

(ii) The applicant will disseminate its project information to other States.

(Authority: Secs. 12(c) and 311(a)(1) of the Act, 29 U.S.C. 711(c) and 777a(a)(1))

[50 FR 25407, June 18, 1985]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 373.40 What are the matching requirements?

Grants may be made for paying all or part of the costs of activities covered under this program. Where part of the costs is to be borne by the grantee, the amount of grantee participation is determined at the time of the grant award and is generally not less than 10 percent of the total cost of the project.

(Authority: Secs. 12(c) and 311 of the Act; 29 U.S.C. 711(c) and 777(a))

§ 373.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530-75.534, the costs of the construction of a rehabilitation facility are also allowed under this program.

(Authority: Secs. 12(c) and 311 of the Act; 29 U.S.C. 711(c) and 777(a))

§ 373.42 What special conditions apply under this program to projects that involve construction?

(a) Any construction of a rehabilitation facility undertaken under this program is subject to the requirements affecting construction under 34 CFR Part 369 and to any other requirements of the Department in effect concerning Federally assisted building design and construction activities.

(b) The acquisition, expansion, remodeling, alteration or renovation of an existing building in connection with a special project or demonstration may not be undertaken unless it has been demonstrated to be essential to expanding or otherwise improving rehabilitation services to handicapped individuals within the related special project or demonstration.

(Authority: Secs. 12(c) and 311 of the Act; 29 U.S.C. 711(c) and 777(a))

PART 374—SPECIAL PROJECTS AND DEMONSTRATIONS FOR MAKING RECREATIONAL ACTIVITIES ACCESSIBLE TO HANDICAPPED INDIVIDUALS

Subpart A—General

Sec.

374.1 What is the program of special projects and demonstrations for making recreational activities accessible to handicapped individuals?
374.2 Who is eligible for assistance under this program?
374.3 What regulations apply to this program?
374.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

374.10 What types of projects are authorized under this program?

Sec.

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

374.30 What selection criteria does the Secretary use under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

374.40 What are the matching requirements?
374.41 What are allowable costs?
374.42 What are the special requirements affecting the scheduling of recreational activities within a project?
374.43 What are the special requirements affecting the renovation or construction of facilities?

AUTHORITY: Secs. 12(c) and 311(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3), unless otherwise noted.

SOURCE: 46 FR 5429, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 374.1 What is the program of special projects and demonstrations for making recreational activities accessible to handicapped individuals?

This program is designed to operate programs and, where appropriate, to renovate and construct facilities to demonstrate methods of making recreational activities fully accessible to handicapped individuals.

(Authority: Sec. 311(a)(3) of the Act; 29 U.S.C. 777a(a)(3))

§ 374.2 Who is eligible for assistance under this program?

State and public and other nonprofit agencies and organizations are eligible for assistance under this program.

(Authority: Sec. 311(a) of the Act; 29 U.S.C. 777a(a)(3))

§ 374.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 369;

(b) The regulations in this Part 734.

(Authority: Sec. 311(a) of the Act; 29 U.S.C. 777a(a)(31))

§ 374.4 What definitions apply to this program?

The definitions in 34 CFR Part 369 apply to this program.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 771(c))

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 374.10 What types of projects are authorized under this program?

(a) This program provides financial assistance for the support of the special projects and demonstrations, and related research and evaluation concerned with operating programs to demonstrate methods of making recreation activities fully accessible to handicapped individuals, including the renovation and construction of facilities where appropriate.

(b) Activities carried out under this program must focus on as broad a range of recreation activities as is appropriate to the geographical area, including indoor and outdoor recreation activities; competitive, active, and quiet recreation activities; social activities; and recreation activities related to the fine arts. These activities may include but are not limited to, arts, camping, dance, drama, fitness, 4-H, scouting, sports, swimming, travel and other related recreation activities.

(c) Projects must demonstrate innovative ways in which recreation services and activities can be made fully accessible to handicapped individuals, with special emphasis on those who are the most severely handicapped.

(Authority: Sec. 311(a)(3) of the Act; 29 U.S.C. 777a(a)(3))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 374.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (30 points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (15 points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Relevance to State-Federal rehabilitation service program* (10 points). The Secretary reviews each application for information that shows—

(1) The project will be designed primarily for handicapped individuals being provided vocational rehabilitation services by State vocational rehabilitation units; and

(2) Recreation services provided under this program will be provided in a manner consistent with the provision of similar services under the State vocational rehabilitation service program under Title I of the Act.

(g) *Impact of the project* (20 points).

(1) The Secretary reviews each application for information that shows the expected impact of the project on improving the quality of life of the handicapped individuals to be served.

(2) The Secretary looks for information that shows—

(i) The numbers of handicapped individuals expected to be served;

(ii) The types of handicapped individuals expected to be served;

(iii) The types of recreation activities expected to be available;

(iv) The extent to which the full range of resources at the facility will be accessible and can be expected to be utilized by handicapped individuals in the service area; and

(v) The extent to which there is evidence of support for the project from community agencies with an interest in recreational activities for handicapped individuals.

(Authority: Secs. 12(c) and 311(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 374.40 What are the matching requirements?

Grants may be made for paying all or part of the costs of activities covered under this program. Where part of the costs is to be borne by the grantee, the amount of grantee participation is determined at the time of the grant award and is generally not less than 10 percent of the total cost of the project.

(Authority: Secs. 12(c) and 311(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

§ 374.41 What are allowable costs?

In addition to those allowable costs estabilished in EDGAR §§ 75.530–75.534, the following costs are also allowable in the case of any project which involves the renovation or construction of a facility:

(a) Acquisition of land in connection with construction of a rehabilitation facility;

(b) Acquisition of existing buildings;

(c) Remodeling, alteration, renovation, or expansion of existing buildings;

(d) Construction of new buildings;

(e) Architect's services;

(f) Site survey and soil investigation;

(g) Fixed or movable equipment;

(h) Works of art in an amount not to exceed one percent of the total cost of the project; and

(i) Other activities specifically provided for in the application.

(Authority: Secs. 12(c) and 311(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

§ 374.42 What are the special requirements affecting the scheduling of recreational activities within a project?

The schedule of recreational activities must be arranged so as not to interfere with a handicapped individual's attendance at work or school.

(Authority: Secs. 12(c) and 311(a)(3) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

§ 374.43 What are the special requirements affecting the renovation or construction of facilities?

(a) To the greatest extent possible, existing facilities for the provision of recreational activities are expected to be utilized so that the need for the renovation or construction of facilities can be avoided.

(b) When renovation or construction of a facility is demonstrated to be necessary under this program, it must conform with the requirements specified under Part 369 and with any other requirements of the Department in effect concerning Federally assisted building design and construction activities.

(Authority: Secs. 12(c) and 311(a) of the Act; 29 U.S.C. 711(c) and 777a(a)(3))

PART 375—HANDICAPPED MIGRATORY AGRICULTURAL AND SEASONAL FARMWORKER VOCATIONAL REHABILITATION SERVICE PROJECTS

Subpart A—General

Sec.

375.1 What is the Handicapped Migratory Agricultural and Seasonal Farmworkers Service Projects Program?
375.2 Who is eligible for assistance under this program?
375.3 What regulations apply to this program?
375.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

375.10 What activities are eligible for assistance?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make A Grant?

375.30 What selection criteria does the Secretary use under this program?
375.40 What are the matching requirements?
375.41 What are allowable costs?
375.42 What are the special requirements affecting coordination with related programs?

AUTHORITY: Secs. 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b, unless otherwise noted.

SOURCE: 46 FR 5430, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 375.1 What Is the Handicapped Migratory Agricultural and Seasonal Farmworkers Service Projects Program?

This program is designed to provide financial assistance to projects for providing vocational rehabilitation services to handicapped migratory agricultural workers or handicapped seasonal farmworkers.

(Authority: Sec. 321 of the Act; 29 U.S.C. 777b)

§ 375.2 Who is eligible for assistance under this program?

(a) Applications may be made by State vocational rehabilitation agencies or local agencies administering a vocational rehabilitation program under written agreements with State agencies.

(b) A State agency may, if it chooses, enter into an agreement with the State vocational rehabilitation agencies of one or more other States to develop a cooperative program for the provision of vocational rehabilitation services under this program.

(Authority: Secs. 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b)

§ 375.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 Part 369;

(b) The regulations in this Part 375.

(Authority: Sec. 312 of the Act; 29 U.S.C. 777b)

§ 375.4 What definitions apply to this program?

(a) The definitions in 34 CFR Part 369 apply to this program.

(b) The following definitions also apply to this program—

(1) "Family members" or "members of the family" means any relative by blood or marriage of a handicapped migratory agricultural worker or seasonal farmworker and other individuals living in the same household with whom the handicapped migratory agricultural worker or the seasonal farmworker has a close interpersonal relationship, and who are with the worker, or have accompanied the worker on his migratory tour to the point in time at which the State agency comes into contact with him.

(Authority: Secs. 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b)

(2) "Migratory agricultural worker" means a person who occasionally or habitually leaves his place of residence on a seasonal or other temporary basis to engage in ordinary agricultural operations or in services incident to the preparation of farm commodities for the market in another locality in which he resides during the period of such employment.

(Authority: Secs. 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b)

(3) "Seasonal farmworker" means a person who on a seasonal or other temporary basis engages in ordinary agricultural operations or in services incident to the preparation of farm commodities for the market within daily commuting distance from his place of normal residence.

(Authority: Secs. 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777b)

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 375.10 What activities are eligible for assistance?

Project activities include the development and implementation of special arrangements for providing vocational rehabilitation services to handicapped individuals who are migratory agricultural workers or seasonal farmworkers and to members of their families (whether or not handicapped) who are with them, where these services are necessary to the vocational rehabilitation of the handicapped migratory agricultural worker or seasonal farmworker.

(Authority: Sec. 312 of the Act; 29 U.S.C. 777b)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make A Grant?

§ 375.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (35 points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (15 points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (15 points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Liaison with the State vocational rehabilitation service program* (15 points).

(1) The Secretary reviews each application for information that shows the adequacy of the liaison with the State vocational rehabilitation service program.

(2) The Secretary looks for information that shows project linkages with the State vocational rehabilitation agency and community agencies adequate to ensure client referrals, outreach and utilization of project results.

(g) *Likelihood of sustaining program* (5 points).

(1) The Secretary reviews each application for information that shows the likelihood of the service program being sustained after the termination of Federal grant support.

(2) The Secretary looks for information that shows that the State or local agency intends to continue to operate the service program after the termination of the project.

(Authority: Secs. 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777(b))

§ 375.40 What are the matching requirements?

The Federal share may not be more than 90 percent of the total cost of a project under this program.

(Authority: Secs. 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777(b))

§ 375.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530–75.534, the following items are allowable under this program—

(a) Staff training necessary to improve the capacity of the State or local agency to serve handicapped migratory agricultural workers or seasonal farmworkers and members of their families when the training is included within a program of services; and

(b) Maintenance payments which must be provided at rates consistent with rates paid to handicapped individuals under the State plan for vocational rehabilitation services under 34 CFR Part 361.

(Authority: Secs. 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777(b))

§ 375.42 What are the special requirements affecting coordination with related programs?

Each project must be administered in close cooperation with other public and nonprofit agencies and organizations having special skills and experience in the provision of services to migratory agricultural workers, seasonal farmworkers, or their families, including programs authorized under Title I of the Elementary and Secondary Education Act of 1964, the Migrant Health Act and the Farm Labor Contractor Registration Act of 1963.

(Authority: Secs. 12(c) and 312 of the Act; 29 U.S.C. 711(c) and 777(b))

PART 376—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING TRANSITIONAL REHABILITATION SERVICES TO HANDICAPPED YOUTH

Subpart A—General

Sec.
376.1 What is the Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth?
376.2 Who is eligible for assistance under this program?
376.3 What regulations apply to this program?
376.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

376.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

376.30 What priorities are considered for support by the Secretary under this part?
376.31 What selection criteria does the Secretary use under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

376.40 What are the matching requirements?
376.41 What are the requirements for cooperation between grantees and other agencies and organizations?

AUTHORITY: Sec. 311(c) of the Rehabilitation Act of 1973, Pub. L. 93-112, as added by sec. 136(c) of Pub. L. 98-221, 98 Stat. 26 (29 U.S.C. 777a(c)), unless otherwise noted.

SOURCE: 51 FR 3895, Jan. 30, 1986, unless otherwise noted.

Subpart A—General

§ 376.1 What is the Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth?

This program is designed to provide job training for handicapped youths to prepare them for entry into the labor force, including competitive or support employment.

(Authority: Sec. 311(c); 29 U.S.C. 777a(c))

§ 376.2 Who is eligible for assistance under this program?

State and other public and nonprofit agencies and organizations are eligible for assistance under this program.

(Authority: Sec. 311(c); 29 U.S.C. 777a(a))

§ 376.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in 34 CFR Part 369.

(b) The regulations in this Part 376.

(Authority: Secs. 12(c) and 311(c); 29 U.S.C. 711(c) and 777a(c))

§ 376.4 What definitions apply to this program?

(a) The definitions in 34 CFR Part 369 apply to this program.

(b) The following definitions also apply to this program:

(1) "Handicapped youth" means any handicapped child who is between the ages of twelve and 26.

(2) "Supported employment" means paid work in a variety of settings, particularly regular work sites, especially designed for handicapped persons—

(i) For whom competitive employment at or above the minimum wage is not immediately obtainable; and

(ii) Who, because of their disability, need intensive ongoing support to perform in a work setting.

(3) "Transitional rehabilitation services" means any vocational rehabilitation services available under the State plan for vocational rehabilitation services under 34 CFR Part 361 or the State plan for independent living services under 34 CFR Part 365 and may also include—

(i) Jobs search assistance;

(ii) On-the-job training;

(iii) Job development, including worksite modification and use of advanced learning technology for skills training; and

(iv) Follow-up services for individuals placed in employment.

(Authority: Secs. 12(c) and 311(c), 29 U.S.C. 711a(c) and 777(c))

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 376.10 What types of projects are authorized under this program?

(a) This program supports special projects and demonstrations, including research and evaluation, for the following purposes:

(1) To demonstrate effective ways in which to provide job training, placement, and other transitional rehabilitation services to handicapped youth to prepare them for entry in the labor force, including competitive or supported employment.

(2) To demonstrate service programs for handicapped youth reflecting cooperative efforts between local educational agencies, business and industry, vocational rehabilitation agencies, facilities, parent groups, public or other nonprofit developmental disabilities agencies, organizations representing labor, and organizations responsible for promoting or assisting in local economic development.

(3) To develop and implement new patterns or practices of transitional rehabilitation service delivery and to conduct the field-testing and evaluation of these patterns or practices to determine the efficacy of their being replicated in other settings.

(b) Research and evaluation activities carried out under this program must be specifically related to a transitional rehabilitation service model under which direct services are provided.

(c) Projects funded under this part must serve handicapped youths.

(d) A project funded under this part may include dissemination of information on project activities to business and industry.

(Authority: Secs. 12(c) and 311(c), 29 U.S.C. 711a(c) and 777(c))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 376.30 What priorities are considered for support by the Secretary under this part?

The Secretary may select annually in a Notice published in the Federal Register, one or more of the following priority areas for funding under this program:

(a) *Community-based transitional rehabilitation service delivery.* This priority supports projects that demonstrate exemplary models for developing and establishing community-based transitional rehabilitation service programs that result directly in competitive or supported employment for handicapped youth within the labor force.

(b) *Statewide transitional rehabilitation service delivery.* This priority supports projects that demonstrate effective Statewide approaches to transitional rehabilitation service delivery for handicapped youth and demonstrate cooperative efforts between State agencies responsible for service to handicapped youth, including but not limited to, special education, vocational rehabilitation, and day services for adults with developmental disabilities.

(c) *Transitional rehabilitation services for handicapped youth with special needs.* This priority supports projects that demonstrate transitional rehabilitation service programs focused on meeting the special job training and placement needs of one or more groups of individuals with physical or mental disabilities which present unusual and difficult rehabilitation problems including, but not limited to, blindness, cerebral palsy, deafness, epilepsy, mental illness, mental retardation, and learning disability.

(d) *Transitional rehabilitation services for institutionalized persons.* This priority supports projects that demonstrate effective ways to assist youths and young adults who are institutionalized, including those residing in skilled nursing or intermediate care facilities, to return to community living and competitive or supported employment.

(e) *Transitional rehabilitation services for unemployed handicapped youth.* This priority supports projects that demonstrate ways to train and place in competitive or supported employment handicapped youth who were unable to participate in special education programs or who recently graduated from those programs but have been unable to secure and maintain employment.

(f) *Home-based transitional rehabilitation services.* This priority supports projects that demonstrate ways in which handicapped youth, including those residing in rural areas, who because of the severity of their disabilities are precluded from employment in the community, could be gainfully employed in home settings.

(Authority: Sec. 311(c); 29 U.S.C. 777(a), (c))

§ 376.31 What selection criteria does the Secretary use under this program?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Plan of operation* (20 points). The Secretary reviews each application in accordance with the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 points). The Secretary reviews each application in accordance with the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (5 points). The Secretary reviews each application in accordance with the criterion in § 369.31(c).

(d) *Evaluation plan* (5 points). The Secretary reviews each application in accordance with the criterion in § 369.31(d).

(e) *Adequacy of resources* (5 points). The Secretary reviews each application in accordance with the criterion in § 369.31(e).

(f) *Impact* (20 points).

(1) The Secretary reviews each application to determine the probable impact of the proposed project on rehabilitation programs for handicapped youth.

(2) The Secretary considers—

(i) The contribution that the project findings will make to current rehabilitation practice; and

(ii) The extent to which findings and products can be used for the benefit of other groups of handicapped youth.

(g) *Innovativeness* (20 points).

(1) The Secretary reviews each application to determine the innovativeness of the proposed project.

(2) The Secretary considers—

(i) The approach to be used in the proposed project in providing transitional rehabilitation services is innovative and appropriate to the special needs of the groups of handicapped youth being served; and

(ii) The approach can be replicated in other service settings.

(h) *Likelihood of sustaining the program* (15 points).

(1) The Secretary reviews each application to determine the likelihood of the service program being sustained after the termination of Federal grant support.

(2) The Secretary considers the extent to which—

(i) The applicant agency intends to continue to operate the service program after the termination of the project;

(ii) There is a sufficient base of service programs and work opportunities to ensure a lasting change in the way transitional rehabilitation services are provided to handicapped youths in the project area; and

(iii) Agencies in the project area with responsibilities which relate to the purpose of the project are actively collaborating in service delivery and project management.

(Authority: Sec. 311(c); 29 U.S.C. 777a(c))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 376.40 What are the matching requirements?

The Secretary may pay all or part of the costs of activities funded under this program. Where part of the costs is to be borne by a grantee, the amount of grantee participation is determined at the time of the grant award and is generally not less than 10 percent of the total cost of the project.

(Authority: Secs. 12(c) and 311(c); 29 U.S.C. 711(c) and 777a(c))

§ 376.41 What are the requirements for cooperation between grantees and other agencies and organizations?

Each project must be designed to demonstrate a cooperative effort between local educational agencies, business and industry, vocational rehabilitation programs, organizations representing labor, and organizations responsible for promoting or assisting in local economic development.

(Authority: Sec. 311(c); 29 U.S.C. 777a(c))

PART 378—PROJECTS FOR INITIATING SPECIAL RECREATION PROGRAMS FOR HANDICAPPED INDIVIDUALS

Subpart A—General

Sec.
378.1 What is the program of projects for initiating special recreation programs for handicapped individuals?
378.2 Who is eligible for assistance under this program?
378.3 What regulations apply to this program?
378.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

378.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

378.30 [Reserved]
378.31 What selection criteria does the Secretary use under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

378.40 What are the matching requirements?
378.41 [Reserved]
378.42 What are the special requirements affecting the scheduling of recreational activities within a project?
378.43 What are the special requirements affecting coordination with related programs?

Authority: Secs. 12(c) and 316 of the Act; (29 U.S.C. 711(c) and 777(f)), unless otherwise noted.

Source: 46 FR 5431, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 378.1 What is the program of projects for initiating special recreation programs for handicapped individuals?

This program is designed to initiate special programs to provide handicapped individuals with recreational activities which can be expected to aid in their mobility and socialization.

(Authority: Sec. 316 of the Act; 29 U.S.C. 711(c) and 777(f))

§ 378.2 Who is eligible for assistance under this program?

Applications may be made by State and public and other nonprofit agencies and organizations.

(Authority: Secs. 12(c) and 316 of the Act; 29 U.S.C. 711(c) and 777(f))

§ 378.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 369.

(b) The regulations in this Part 378.

(Authority: Sec. 316 of the Act; 29 U.S.C. 777(f))

§ 378.4 What definitions apply to this program?

The definitions in 34 CFR Part 369 apply to this program.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 777(c))

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 378.10 What types of projects are authorized under this program?

(a) This program supports projects which initiate programs of recreational services for handicapped individuals.

(b) Activities carried out under this program must include as broad a range of recreational activities as is appropriate to the geographical area, including indoor and outdoor recreational activities; competitive, active, and quiet recreational activities; social activities; and recreational activities related to the fine arts. These activities may include, but are not limited to, arts, camping, dance, drama, 4-H, fitness, scouting, sports, swimming, travel and related recreational activities designed—

(1) To promote personal satisfaction;

(2) To provide equal recreational opportunity;

(3) To provide normalization experiences;

(4) To foster social interaction and physical and mental health; and

(5) To provide individualized rehabilitation and therapeutic activities to alleviate the effects of disabilities.

(Authority: Sec. 316 of the Act; 29 U.S.C. 777(f))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 378.30 [Reserved]

§ 378.31 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (30 points).

The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 points).

The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (10 points).

The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (10 points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Relevance to State-Federal rehabilitation services program* (10 points).

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation services program.

(2) The Secretary looks for information that shows—

(i) The project will be designed primarily for handicapped individuals being provided vocational rehabilitation services by State vocational rehabilitation units; and

(ii) Recreational services provided under this program will be provided in a manner consistent with the provision of similar services under the State vocational rehabilitation services program under Title I of the Act.

(g) *Impact of the project* (20 points).

(1) The Secretary reviews each application for information that shows the expected impact of the project on improving the quality of life of the handicapped individuals to be served.

(2) The Secretary looks for information that shows—

(i) The number of handicapped individuals expected to be served;

(ii) The types of handicapped individuals expected to be served;

(iii) The types of recreational activities expected to be available; and

(iv) The extent to which the full range of resources can be expected to be utilized by the handicapped individuals in the service area.

(h) *Likelihood of sustaining the service program* (5 points).

(1) The Secretary reviews each application for information that shows the likelihood of the service program being sustained after the termination of Federal grant support.

(2) The Secretary looks for information that shows that the applicant intends to continue to operate the recreational activities after the termination of the project.

(Authority: Secs. 12(c) and 316 of the Act; 29 U.S.C. 711(c) and 777f)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 378.40 What are the matching requirements?

Grants may be made for paying all or part of the costs of activities covered under this program. Where part of the costs is to be borne by the grantee, the amount of grantee participation is determined at the time of the grant award and is generally not less than 10 percent of the total project costs.

(Authority: Secs. 12(c) and 316 of the Act; 29 U.S.C. 711(c))

§ 378.41 [Reserved]

§ 378.42 What are the special requirements affecting the scheduling of recreational activities within a project?

The schedule of recreational activities must be arranged so as not to interfere with a handicapped individual's attendance at work or school.

(Authority: Sec. 316 of the Act; 29 U.S.C. 777f)

§ 378.43 What are the special requirements affecting coordination with related programs?

To the greatest extent possible, existing facilities and resources must be used to provide the recreational activities. The grantee must also utilize existing community recreation programs or service resources available under any related programs in the geographical area which are supported or authorized under the Developmental Disabilities Assistance and Bill of Rights Act, The Education for All Handicapped Children Act, the National Endowment of the Arts and Humanities Act of 1965, Title XX of the Social Security Act, the Community Education Act, and the Historic Preservation Fund and Land and Water Conservation Fund.

(Authority: Secs. 12(c) and 316 of the Act; 29 U.S.C. 711(c) and 777f)

PART 379—PROJECTS WITH INDUSTRY

Subpart A—General

Sec.
379.1 What is the projects with industry program?
379.2 Who is eligible for assistance under this program?
379.3 What regulations apply to this program?
379.4 What definitions apply to this program?

Sec.

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

379.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

379.30 What selection criteria does the Secretary use under this program?
379.31 How does the Secretary enter into an agreement?

Subpart E—What Conditions Must Be Met by a Grantee?

379.40 What are the matching requirements?
379.41 What are allowable costs?
379.42 What prior assurances are required for agreements?
379.43 What general provisions are required in agreements?
379.44 What wage rates are required under agreements?
379.45 What on-the-job training is required?

AUTHORITY: Secs. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 759g, unless otherwise noted.

SOURCE: 46 FR 5432, Jan. 19, 1981, unless otherwise noted.

Subpart A—General

§ 379.1 What is the projects with industry program?

This program is designed to provide handicapped individuals with training, employment, and supportive services and assistance within business, industry, or other realistic work settings in order to prepare them for competitive employment and permit them to maintain their employment.

(Authority: Sec. 621(a) of the Act; 29 U.S.C. 759g(a))

§ 379.2 Who is eligible for assistance under this program?

Employers and profit-making and nonprofit organizations with which the Secretary may enter into an agreement include any—

(a) Designated State unit;

(b) Industrial, business, or commercial enterprise;

(c) Labor organization;

(d) Employer;

(e) Industrial or community trade association;

(f) Rehabilitation facility; or

(g) Other agency or organization with the capacity to arrange, coordinate, or conduct training and other employment programs, and provide supportive services and assistance for handicapped individuals in a realistic work setting.

(Authority: Sec. 621(a)(1) of the Act; 29 U.S.C. 795g(a))

[50 FR 38630, Sept. 23, 1985]

§ 379.3 What regulations apply to this program?

The following regulations apply to this program:

(a) 34 CFR Part 369; and

(b) The regulations in this Part 379.

(Authority: Sec. 621 of the Act; 29 U.S.C. 795g)

§ 379.4 What definitions apply to this program?

The definitions in 34 CFR Part 369 apply to this program.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 379.10 What types of projects are authorized under this program?

The Projects with Industry program provides financial assistance for the following types of activities:

(a) Providing handicapped individuals with training and employment in a realistic work setting in order to prepare them for employment in the competitive market, including a planned and systematic sequence of training and instruction in occupational and employment skills, and providing reasonable assurance of gainful employment at the successful termination of the training and instruction;

(b) Providing handicapped individuals with supportive services that are necessary to permit them to continue to engage in the employment or a related type of employment for which they have received training under this program; and

(c) To the extent appropriate, expanding job opportunities for handicapped individuals by analyzing job demands and capabilities of the handicapped individuals and providing for:

(1) The development and modification of jobs to accommodate the special needs of the handicapped individuals being trained and employed under this program;

(2) The purchase and distribution of special aids, appliances, or equipment adapted to the needs of a handicapped individual for use at a jobsite;

(3) The modification of any facilities or equipment of the employer which are to be used by handicapped individuals under this program; and

(4) The establishment of appropriate job placement services.

(Sec. 621(a) of the Act; 29 U.S.C. 795g)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 379.30 What selection criteria does the Secretary use under this program?

(a) *Plan of operation* (10 points). The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 points). The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (5 points). The Secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan* (5 points). The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources* (5 points). The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Achievement of competitive employment objectives* (35 points). (1) The Secretary reviews each application for information that shows that competitive employment objectives will be achieved for handicapped individuals being served under a project.

(2) The Secretary looks for information that shows that—

(i) The project has the capacity for placing a substantial number of handicapped individuals in competitive employment on a cost-effective basis;

(ii) Handicapped individuals will be trained in occupations for which there is a realistic demand in the competitive labor market and, where appropriate, adequate consideration is given to labor union requirements in the development of training programs; and

(iii) The project has the capacity for creating jobs which offer career development and advancement opportunities for handicapped individuals.

(g) *Coordination with service agencies* (20 points).

(1) The Secretary reviews each application for information that shows an adequate level of coordination with appropriate service agencies in the community.

(2) The Secretary looks for information that shows—

(i) Coordination of project activities with the State vocational rehabilitation unit and with other appropriate community resources in order to ensure an adequate number of referrals and a maximum use of similar benefits; and

(ii) Establishment of linkages with business, industry, trade associations, labor unions, and other concerned organizations, as demonstrated by the establishment of an advisory committee with representation from these groups to share in policy and decisionmaking functions.

(h) *Innovativeness of approach* (10 points).

(1) The Secretary reviews each application for information that shows an innovativeness of approach in preparing handicapped individuals for competitive employment.

(2) The Secretary looks for information that shows creativity and an innovative approach in the methodology for achieving project objectives.

(Authority: Secs. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

§ 379.31 How does the Secretary enter into an agreement?

The Secretary enters into an agreement in consultation with the Secretary of Labor and the Secretary of Commerce and with the State vocational rehabilitation unit in the State in which the project is to be carried out, except where the scope of the proposed project extends beyond a single State.

(Authority: Sec. 621 of the Act; 29 U.S.C. 795g)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 379.40 What are the matching requirements?

The Federal share may not be more than 80% of the total cost of a project under this program.

(Authority: Sec. 621(c) of the Act; 29 U.S.C. 795g(c))

§ 379.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530-75.534, the following items are allowable costs under this program:

(a) The costs of job training and related vocational rehabilitation services and supportive rehabilitation services;

(b) Instruction and supervision of trainees;

(c) Training materials and supplies, including consumable materials;

(d) Instructional aids;

(e) Bonding fees, liability and insurance premiums;

(f) The purchase or modification of equipment or facilities adapted for the use of handicapped individuals and special aids and appliances; and

(g) Alteration and renovation appropriate and necessary to ensure access to and utilization of buildings by handicapped persons.

(Authority: Secs. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

§ 379.42 What prior assurances are required for agreements?

Before entering into an agreement under this program, the Secretary consults with the prospective employer or other entity sponsoring the project, and, to the extent possible, with the State vocational rehabilitation unit and the handicapped individuals to be trained and employed under the project. On the basis of this consultation, it must be determined that:

(a) The State vocational rehabilitation unit will, to the maximum extent practicable, maintain a continuing relationship with the handicapped individuals to be served in the project and will either provide necessary vocational rehabilitation services and related supportive services directly or will otherwise ensure their availability;

(b) The bargaining agent under any applicable collective bargaining agreement concurs with the project;

(c) The trainee wage rates will not tend to create unfair competitive labor cost advantages nor have the effect of impairing or depressing wage or working standards established for experienced workers for work of a comparable character; and

(d) No abnormal labor condition such as a strike, a lockout, or other similar condition exists with respect to the applicant.

§ 379.43 What general provisions are required in agreements?

Any agreement entered into must, in addition to standard provisions—

(a) Provide for adherence to the terms or conditions of employment prescribed by any applicable Federal, State, or local law;

(b) Provide that a determination by competent authority of failure to adhere to the terms or conditions required by paragraph (a) of this section will constitute cause for termination of the contract or agreement;

(c) Provide that the Federal share of the costs will cover only a part of the total costs of the project;

(d) Provide that the recruitment, examination, appointment, training, promotion, retention, or any other personnel action with respect to any handicapped individual receiving training or employment, will be without regard to race, sex, color, creed, age, or national origin, and that violation will constitute grounds for termination of the contract or arrangement and that the United States will have a right to seek judicial enforcement of this provision;

(e) Provide that trainees will be compensated for hours spent in production of any goods or services;

(f) Provide that those individuals to receive training or employment services under the contract or arrangement will be individuals determined by the appropriate State vocational rehabilitation unit to be handicapped individuals suitable for these services;

(g) Provide reasonable assurance that handicapped individuals successfully completing the training program will be employed by the employer or within a similar enterprise;

(h) Specify the duration of the project;

(i) Provide that when funds are given directly to an employer, the Secretary, together with the State vocational rehabilitation unit, has the right to review any termination of employment. In the event that that termination occurs less than three years after the handicapped individual began his or her employment, the Secretary is entitled to require the repayment of a portion of the funds made available to the employer, if the Secretary in consultation with the State unit determines that there was not a reasonable cause for the termination;

(j) Provide that any handicapped individual placed with an employer under this program will be given terms and benefits of employment equal to those which are given other employees of the employer;

(k) Provide that handicapped employees will not be segregated from other employees unless segregation is the only approach that will assure equal opportunity to handicapped employees;

(l) Contain an agreement to make reports and to keep any records and accounts required by the Secretary and to make records and accounts available for audit purposes; and

(m) Contain a description of an annual evaluation plan which contains, at a minimum, the following elements:

(1) The numbers and types of handicapped individuals assisted.

(2) The types of assistance provided.

(3) The sources of funding.

(4) The percentage of resources committed to each type of assistance provided.

(5) The extent to which the employment status and earning power of handicapped individuals changed following assistance.

(6) The extent of capacity building activities, including collaboration with other organizations, agencies, and institutions.

(7) A comparison, if appropriate, of current activities with activities of prior years.

(Approved by the Office of Management and Budget under control number 1820-0018)

(Authority: Secs. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

[46 FR 5432, Jan. 19, 1981, as amended at 50 FR 38631, Sept. 23, 1985]

§ 379.44 What wage rates are required under agreements?

(a) The agreement must include the rate of compensation to be paid to trainees engaged in the production of any goods or services. The wage rate paid a trainee must be the higher of the following:

(1) The minimum entrance rate for inexperienced workers in the same occupation, or if the occupation is new to the establishment, the prevailing entrance rate for the occupation among other establishments in the community or area; or

(2) The minimum rate required under the Fair Labor Standards Act or the Walsh-Healy Public Contracts Act, to the extent that these Acts are applicable to the trainee.

(b) The agreement must further provide for an increasing rate of payment to trainees if the training program is of such duration that periodic increases are reasonable and if the proficiency of the trainee merits the increases.

(Authority: Secs. 12(c) and 621b; 29 U.S.C. 711(c) and 795g)

§ 379.45 What on-the-job training is required?

The agreement must—

(a) Provide for methods of instruction, progression of trainees, and size of the training group, including individualized or group training, comparable in duration to other training programs for the particular occupation, and adequate in content to qualify trainees for employment;

(b) Provide adequate and safe facilities and equipment; and

(c) Require that suitable records of attendance, performance and progress of trainees be maintained and that these records be made available to the Secretary when requested.

(Authority: Sec. 621 of the Act; 29 U.S.C. 795g)

PART 385—REHABILITATION TRAINING

Subpart A—General

Sec.

385.1 What is the Rehabilitation Training Program?

385.2 Who is eligible for assistance under these programs?

385.3 What regulations apply to these programs?

385.4 What definitions apply to these programs?

Subpart B—[Reserved]

Subpart C—How Does One Apply For a Grant?

385.20 What are the application procedures for these programs?

Subpart D—How Does the Secretary Make a Grant?

385.30 [Reserved]

385.31 How does the Secretary evaluate an application?

385.32 What general selection criteria does the Secretary use in reviewing an application?

385.33 What other factors does the Secretary consider in reviewing an application?

Subpart E—What Conditions Must Be Met by a Grantee?

385.40 What are the requirements pertaining to the membership of a project advisory committee?

385.41 What are the requirements affecting the collection of data from State agencies?

385.42 What are the requirements affecting the dissemination of training materials?

385.43 What requirement applies to the training of rehabilitation counselors?

AUTHORITY: Secs. 12(c), 304 and 306, Rehabilitation Act of 1973, as amended (29 U.S.C. 711(c), 744 and 776), unless otherwise noted.

SOURCE: 45 FR 86379, Dec. 30, 1980, unless otherwise noted.

Subpart A—General

§ 385.1 What is the Rehabilitation Training Program?

(a) The Rehabilitation Training Program is designed to—

(1) Increase the supply of qualified personnel available for employment in public and private agencies and institutions involved in the vocational rehabilitation and independent living rehabilitation of physically and mentally handicapped individuals, especially those individuals with the most severe handicap; and

(2) Maintain and upgrade basic skills and knowledge of personnel employed as providers of vocational, medical, social or psychological rehabilitation services.

(b) The Secretary awards financial assistance through five categories of training programs—

(1) Rehabilitation Long-Term Training (Part 386);

(2) Experimental and Innovative Training (Part 387);

(3) State Vocational Rehabilitation Unit In-Service Training (Part 388);

(4) Rehabilitation Continuing Education Programs (Part 389); and

(5) Rehabilitation Short-Term Training (Part 390).

(Authority: Sec. 304 of the Act; 29 U.S.C. 774)

[45 FR 86379, Dec. 30, 1980, as amended at 50 FR 38631, Sept. 23, 1985]

§ 385.2 Who is eligible for assistance under these programs?

State agencies and other public or nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under the Rehabilitation Training Program.

(Authority: Sec. 304 of the Act; 29 U.S.C. 774)

§ 385.3 What regulations apply to these programs?

The following regulations apply to the Rehabilitation Training Program—

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grant), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 78 (Education Appeal Board).

(b) The regulations in this Part 385.

(c) The regulations in 34 CFR Parts 386,387,388, 389, and 390, as appropriate.

(Authority: Secs. 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774)

[50 FR 38631, Sept. 23, 1985]

§ 385.4 What definitions apply to these programs?

(a) The following definitions in 34 CFR Part 77 apply to the programs under the Rehabilitation Training Program—

"Applicant"
"Application"
"Award"
"Budget Period"
"Department"
"EDGAR"
"Nonprofit"
"Private"
"Project"
"Project Period"
"Public"
"Secretary"

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

(b) The following definitions also apply to programs under the Rehabilitation Training program—

"Act" means the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended.

"*Handicapped individual*" means an individual—

(1) Who has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

(2) Who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services, or for whom an ex-

tended evaluation of vocational rehabilitation potential is necessary to determine whether he or she might reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services.

(Authority: Sec. 7(7)(A) of the Act; 29 U.S.C. 706(7)(A))

"*Independent living rehabilitation services*" or "*independent living services*" means:

(1) Counseling services, including psychological counseling, psychotherapeutic counseling, peer counseling, advocacy services and related services;

(2) Housing incidental to the provision of any independent living rehabilitation services, and including appropriate accommodations to, and modifications of any space utilized to serve severely handicapped individuals;

(3) Physical and mental restoration services;

(4) Attendant care;

(5) Transportation;

(6) Interpreter services for deaf individuals, including tactile interpretation for deaf-blind individuals;

(7) Reading services, rehabilitation teaching services, and orientation and mobility services for blind individuals;

(8) Recreational activities;

(9) Services to members of a severely handicapped individual's family when necessary for improving the individual's ability to engage or continue in employment;

(10) Vocational and other training services, including personal and vocational adjustment when necessary for improving a severely handicapped individual's ability to live and function more independently, or to engage or continue in employment;

(11) Job placement services;

(12) Referral services;

(13) Telecommunications, sensory and other technological aids and devices;

(14) Services for children of preschool age including physical therapy, development of language and communication skills, and child development services;

(15) Any other vocational rehabilitation services available under the State plan for vocational rehabilitation services which are appropriate to the independent living rehabilitation needs of a severely handicapped individual; and

(16) Any appropriate preventive services necessary to decrease the future needs of a severely handicapped individual.

(Authority: Sec. 702(b) of the Act; 29 U.S.C. 796(b))

"*Physical or mental disability*" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

(Authority: Sec. 7(7)(a)(i) of the Act; 29 U.S.C. 706(7)(A)(i))

"*Physical and mental restoration services*" means—

(1) Medical or corrective surgical treatment;

(2) Diagnosis and treatment for mental or emotional disorders by a physician skilled in the diagnosis and treatment of such disorders or by a pyschologist licensed or certified in accordance with State laws and regulations;

(3) Dentistry;

(4) Nursing services;

(5) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(6) Convalescent or nursing home care;

(7) Drugs and supplies;

(8) Prosthetic, orthotic or other assistive devices including hearing aids, essential to obtaining or retaining employment;

(9) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids, prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(10) Podiatry;

(11) Physical therapy;

(12) Speech or hearing therapy;

(13) Psychological services;

(14) Therapeutic recreation services;

(15) Medical or medically related social work services;

(16) Treatment of either acute or chronic medical complications and emergencies which are associated with or arise out of the provision of physical and mental restoration services; or which are inherent in the condition under treatment;

(17) Special services for the treatment of individuals suffering from end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(18) Other medical or medically related rehabilitation services including art therapy, dance therapy, music therapy and psychodrama.

(Authority: Sec. 103(a)(4) of the Act; 29 U.S.C. 723(a)(4))

"Qualified personnel" means personnel who have met existing State certification or licensure requirements, or in the absence of State requirements, have met professionally accepted requirements established by national certification boards.

(Authority: H.R. Conf. Rep. No. 595, 98th Cong., 2d Sess. 32 (1984))

"*State agency*" means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of blind individuals.

(Authority: Sec. 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

"*State unit*" or "*State vocational rehabilitation unit*" means either—

(1) The State agency vocational rehabilitation bureau, division, or other organizational unit which is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of handicapped individuals and which is responsible for the administration of the vocational rehabilitation program of the State agency; or

(2) The independent State commission, board, or other agency which has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Authority: Sec. 7(3) of the Act; 29 U.S.C. 706(3))

"*Stipend*" means financial assistance on behalf of individuals in support of their training, as opposed to salary payment for services provided within the project.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

"*Vocational rehabilitation services*" means—

(1) Evaluation of vocational rehabilitation potential, including diagnostic and related services incidental to the determination of eligibility for, and the nature and scope of services to be provided;

(2) Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout a handicapped individual's program of services, and referral necessary to help handicapped individuals secure needed services from other agencies;

(3) Physical and mental restoration services; necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive;

(4) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials;

(5) Maintenance;

(6) Transportation;

(7) Services to members of a handicapped individual's family when necessary to the vocational rehabilitation of the handicapped individual;

(8) Interpreter services for the deaf, including tactile interpreting for deaf-blind individuals;

(9) Reader services, rehabilitation teaching services, and orientation and mobility services for the blind;

(10) Telecommunications, sensory and other technological aids and devices;

(11) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement and other appropriate public service employment;

(12) Placement in suitable employment;

(13) Post-employment services necessary to maintain suitable employment;

(14) Occupational licenses; and

(15) Other goods and services which can reasonably be expected to benefit a handicapped individual in terms of employability.

(Authority: Sec. 103(a) of the Act; 29 U.S.C. 723(a))

[45 FR 86379, Dec. 30, 1980, as amended at 50 FR 38631, Sept. 23, 1985]

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

§ 385.20 What are the application procedures for these programs?

The Secretary gives the State vocational rehabilitation unit an opportunity to review and comment on applications submitted from within the State that it serves. The procedures to be followed by the applicant and the State are in EDGAR §§ 75.155–75.159.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Subpart D—How Does the Secretary Make a Grant?

§ 385.30 [Reserved]

§ 385.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of general selection criteria identified in § 385.32 and specific selection criteria identified in Parts 386, 387, 388, 389 and 390. The maximum possible score for each complete criterion under each category of training is stated in parentheses in §§ 386.31, 387.31, 388.31, 389.31, and 390.31. The number of points awarded each criterion depends on how well the application meets all the elements under that criterion.

(b) The Secretary awards up to 100 possible points for these selection criteria.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 385.32 What general selection criteria does the Secretary use in reviewing an application?

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Handicapped persons;

(B) The elderly;

(C) Women; and

(D) Members of racial or ethnic minority groups.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of key personnel proposed for the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Handicapped persons;

(B) The elderly;

(C) Women; and

(D) Members of racial or ethnic minority groups.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities;

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and to the extent possible, are objective, and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the application plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Authority: Secs. 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774)

§ 385.33 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria listed in § 385.32 and Parts 386 through 390, the Secretary, in making awards under this program, considers such factors as—

(a) The geographical distribution of projects in each Rehabilitation Training Program category throughout the country; and

(b) The past performance of the applicant in carrying out similar training activities under previously awarded grants, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices and attainment of established project objectives.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 385.40 What are the requirements pertaining to the membership of a project advisory committee?

When a project funded under Parts 386 through 390 establishes an advisory committee, its membership must include handicapped persons or other representatives of handicapped individuals, trainees, and providers of vocational rehabilitation and independent living rehabilitation services.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 385.41 What are the requirements affecting the collection of data from State agencies?

When the collection of data is necessary from handicapped individuals being served by two or more State agencies or from employees of two or more of these agencies, the project director must submit requests for the data to appropriate representatives of the affected agencies, as determined by the Secretary. This requirement also applies to employed project staff and individuals enrolled in courses of study supported under these programs.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 385.42 What are the requirements affecting the dissemination of training materials?

A set of any training materials developed under the Rehabilitation Training Program must be submitted to any information clearinghouse designated by the Secretary.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

§ 385.43 What requirement applies to the training of rehabilitation counselors?

Any grantee who provides training of rehabilitation counselors under any of the programs in 34 CFR Parts 386-390 shall train those counselors in the applicability of the provisions of Section 504 of the Act or ensure that those counselors are knowledgeable in the applicability of those provisions.

(Authority: Sec. 304(a) of the Act; 29 U.S.C. 774(a))

[50 FR 38631, Sept. 23, 1985]

PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

Subpart A—General

Sec.
386.1 What is the Rehabilitation Long-Term Training Program?
386.2 Who is eligible for assistance under this program?
386.3 What regulations apply to this program?
386.4 What definitions apply to this program?

Supart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

386.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

386.30 What selection criteria are used under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

386.40 What are the matching requirements?
386.41 What are allowable costs?
386.42 What are the special requirements affecting the awarding of traineeships?

Authority: Secs. 12(c) and 304, Rehabilitation Act of 1973 (29 U.S.C. 711(c) and 774), unless otherwise noted.

Source: 45 FR 86381, Dec. 30, 1980, unless otherwise noted.

Subpart A—General

§ 386.1 What is the Rehabilitation Long-Term Training Program?

This program is designed to provide academic and non-academic training in areas of personnel shortages identified by the Secretary and published as a notice in the Federal Register, which may include—

(a) Rehabilitation medicine;

(b) Rehabilitation nursing;

(c) Rehabilitation counseling;

(d) Rehabilitation social work;

(e) Rehabilitation psychiatry;

(f) Rehabilitation psychology;

(g) Physical therapy;

(h) Occupational therapy;

(i) Speech-language pathology and audiology;

(j) Rehabilitation facility administration;

(k) Vocational evaluation and work adjustment;

(l) Prosthetics and orthotic;

(m) Rehabilitation of the blind;

(n) Rehabilitation of the deaf;

(o) Rehabilitation of the mentally ill;

(p) Rehabilitation job placement and job development;

(q) Therapeutic recreation;

(r) Undergraduate education in the rehabilitation services;

(s) Rehabilitation administration;

(t) Rehabilitation dentistry;

(u) Independent living;

(v) Client assistance; and

(w) Other fields that contribute to the rehabilitation of handicapped individuals, including homebound and institutionalized individuals and individuals with limited English-speaking ability.

(Authority: Sec. 304 (a) and (b) of the Act; 29 U.S.C. 774 (a) and (b))

[45 FR 86381, Dec. 30, 1980, as amended at 50 FR 38631, Sept. 23, 1985]

§ 386.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: Sec. 304(a) of the Act; 29 U.S.C. 774(a))

§ 386.3 What regulations apply to this program?

The following regulations apply to this program:

(a) 34 CFR Part 385 (Rehabilitation Training); and

(b) The regulations in this Part 386.

(Authority: Sec. 304 of the Act; 29 U.S.C. 774)

§ 386.4 What definitions apply to this program?

The definitions in 34 CFR Part 385 apply to this program.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 386.10 What types of projects are authorized under this program?

The Rehabilitation Long-Term Training Program provides financial assistance for—

(a) Projects that provide basic or advanced training leading to an academic degree in one of those fields of study identified in § 386.1.

(b) Projects that provide a number of interrelated training activities designed to improve the professional competence of employed rehabilitation workers in one of those fields of study indentified in § 386.1 but not directly related to the awarding of an academic degree.

(c) Projects that provide undergraduate medical students an orientation to the concepts and techniques of rehabilitation medicine.

(d) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

(Authority: Sec. 304(b) of the Act; 29 U.S.C. 774(b))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make A Grant?

§ 386.30 What selection criteria are used under this program?

(a) *Plan of operation.* (30 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points)

The Secretary evaluates each application on the baisis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (5 points)

The Secretary evaluates each application on the basis of criterion in § 385.32(e).

(f) *Evidence of need.* (10 points)

(1) The Secretary reviews each application for information that shows that the need for the training project has been adequately justified.

(2) The Secretary looks for information that shows that the need for the training project has been established in terms of rehabilitation manpower supply and demand and includes an assessment of the potential of existing programs within the geographical area to meet the employment needs in the specific rehabilitation field for which grant support is sought.

(g) *Relevance to State-Federal rehabilitation service program.* (10 points)

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State/Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either to increase the supply of trained personnel available to State and other public or nonprofit agencies involved in the rehabilitation

of physically or mentally handicapped individuals, or to maintain and improve the skills and quality of professional personnel in the rehabilitation fieled in which the training is to be provided.

(h) *Nature and scope of curriculum.* (20 points)

(1) The Secretary reviews each application for information that demonstrates the adequacy of the proposed curriculum.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the coursework reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practical and other field experiences in settings that assure student involvement in the provision of vocational rehabilitation or independent living rehabilitation services to physically and mentally handicapped persons, especially those who are severely handicapped;

(iv) The didactic coursework includes student exposure to vocational rehabilitation or independent living rehabilitation processes, concepts, programs, and services; and

(v) There is evidence of current professional accreditation by the designated accrediting agency in the professional field in which grant support is being requested.

(Authority: Secs. 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 386.40 What are the matching requirements?

(a) A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary.

The part of the costs to be borne by the grantee is determined by the Secretary at the time of the award.

(b) The grantee is expected to furnish as large a part of the total project cost as possible. In the case of academic training projects with a multi-year project period, the grantee's share of the teaching costs is expected to increase progressively in each succeeding year so that total personnel costs are fully absorbed by the grantee at the termination of the project period.

(Authority: Sec. 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774 (a))

§ 386.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530-75.562, the following items are allowable under long-term training projects.

(a) Student stipends;

(b) Tuition and fees; and

(c) Student travel in conjunction with training assignments.

(Authority: Secs. 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774 (a))

§ 386.42 What are the special requirements affecting the awarding of traineeships?

(a) A candidate for a rehabilitation traineeship must—

(1) Be a citizen of the United States or a foreign national lawfully admitted to the United States for permanent residence;

(2) Take the training at the educational institution or agency designated in the traineeship award;

(3) Not be an employee of the Federal government;

(4) Not concurrently receiving educational allowances from any other Federal, State or local public or voluntary agency when that allowance is conditioned on a conflicting employment obligation incurred by the trainee, except for federally assisted student loans, or educational allowances or benefits payable under Chapters 34, 35 and 36 of Title 38, U.S.C. as limited by Section 213 of the Veterans Educational and Training Amendments Act of 1972, or educational allowances or benefits payable under any State or local program;

(5) Be enrolled for academic or nonacademic study in the grantee institution;

(6) Express interest in a career in clinical practice, administration, supervision, teaching, or research in the

vocational rehabilitation or independent living rehabiliation of physically or mentally handicapped persons, especially those with the most severe handicaps; and

(7) Indicate an expectation to seek employment in a State vocational rehabilitation agency or in another rehabilitation agency or facility from which the State agency secures services.

(b) No training or instruction may be provided to an individual for any one course of study extending for a period in excess of four years.

(Authority: Secs. 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 774 (b))

[45 FR 86381, Dec. 30, 1980, as amended at 50 FR 38631, Sept. 23, 1985]

PART 387—EXPERIMENTAL AND INNOVATIVE TRAINING

Subpart A—General

Sec.
387.1 What is the Experimental and Innovative Training Program?
387.2 Who is eligible for assistance under this program?
387.3 What regulations apply to this program?
387.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

387.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

387.30 What selection criteria are used under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

387.40 What are the matching requirements?
387.41 What are the allowable costs?

Authority: Secs. 12(c) and 304 of the Rehabilitation Act of 1973 (29 U.S.C. 711(c) and 774), unless otherwise noted.

Source: 45 FR 86383, Dec. 30, 1980, unless otherwise noted.

Subpart A—General

§ 387.1 What is the Experimental and Innovative Training Program?

This program is designed—

(a) To develop new types of rehabilitation personnel, and to demonstrate the effectiveness of these new types of personnel in providing rehabilitation services to severely handicapped persons; and

(b) To develop new and improved methods of training rehabilitation personnel so that there may be a more effective delivery of rehabilitation services by State and other rehabilitation agencies.

(Authority: Sec. 304 of the Act; 29 U.S.C. 774)

§ 387.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: Sec. 304(a) of the Act; 29 U.S.C. 774(a))

§ 387.3 What regulations apply to this program?

(a) 34 CFR Part 385 (Rehabilitation Training); and

(b) The regulations in this Part 387.

(Authority: Sec. 304 of the Act; 29 U.S.C. 774)

§ 387.4 What definitions apply to this program?

The definitions in 34 CFR Part 385 apply to this program.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 387.10 What types of projects are authorized under this program?

The Experimental and Innovative Training Program supports time-limited pilot projects through which new types of rehabilitation workers may be trained or through which innovative methods of training rehabilitation workers may be demonstrated.

(Authority: Sec. 304(b) of the Act; 29 U.S.C. 744(b))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 387.30 What selection criteria are used under this program?

(a) *Plan of operation.* (25 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (15 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (15 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(e).

(f) *Evidence of need.* (10 points)

(1) The Secretary reviews each application for information that shows that the need for the training project has been adequately justified.

(2) The Secretary looks for information that shows that—

(i) The proposed project represents an experimental or innovative approach to the training of rehabilitation workers and provides for the training of new types of rehabilitation workers or the development of innovative training methodologies; and

(ii) The need for the training program has been justified and includes an assessment of the potential of existing training programs of a traditional nature to meet the personnel needs in the rehabilitation field for which support is sought.

(g) *Relevance to State-Federal rehabilitation service program.* (10 points)

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either to increase the supply of trained personnel available to public and private agencies involved in the rehabilitation of physically or mentally handicapped individuals or maintain and improve the skills and quality of rehabilitation workers.

(h) *Nature and scope of curriculum.* (10 points)

(1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed curriculum.

(2) The Secretary looks for information that shows that—

(i) The scope and nature of the training content can be expected to enable the achievement of the established project objectives of the training project;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practicum or other field experiences in settings that assure student involvement in the provision of vocational rehabilitation or independent living rehabilitation services to physically and mentally handicapped persons, especially those who are severely handicapped; and

(iv) The didactic coursework includes student exposure to vocational rehabilitation or independent living rehabilitation processes, concepts, programs, and services.

(Authority: Sec. 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 387.40 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the grant award.

(Authority: Sec. 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774(a))

§ 387.41 What are allowable costs?

In addition to those allowable costs established under EDGAR §§ 75.530-75.562, the following items are allowable under experimental and innovative training projects—

(a) Student stipends;

(b) Tuition and fees; and

(c) Student travel in conjunction with training assignments.

(Authority: Sec. 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774(a))

PART 388—STATE VOCATIONAL REHABILITATION UNIT IN-SERVICE TRAINING

Subpart A—General

Sec.
388.1 What is the State Vocational Rehabilitation Unit In-Service Training Program?
388.2 Who is eligible for assistance under this program?
388.3 What regulations apply to this program?
388.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

388.10 What types of projects are authorized under this program?
388.11 What specific activities may be supported under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

388.30 What selection criteria does the Secretary use in this program?

Subpart E—What Conditions Must Be Met by a Grantee?

388.40 What are the matching requirements?
388.41 What are the allowable costs?

AUTHORITY: Secs. 12(c) and 304 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 711(c) and 774), unless otherwise noted.

SOURCE: 45 FR 86384, Dec. 30, 1980, unless otherwise noted.

Subpart A—General

§ 388.1 What is the State Vocational Rehabilitation Unit In-Service Training Program?

This program is designed to support special projects for training State vocational rehabilitation unit personnel in program areas essential to the effective management of the unit's program of vocational rehabilitation services or in skill areas which will enable staff personnel to improve their ability to provide vocational rehabilitation services to severely handicapped individuals.

(Authority: Sec. 304 of the Act; 29 U.S.C. 774)

§ 388.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: Sec. 304(a) of the Act; 29 U.S.C. 744(a))

§ 388.3 What regulations apply to this program?

The following regulations apply to this program:

(a) 34 CFR Part 385 (Rehabilitation Training); and

(b) The regulations in this Part 388.

(Authority: Sec. 304 of the Act; 29 U.S.C. 744)

§ 388.4 What definitions apply to this program?

The definitions in 34 CFR Part 385 apply to this program.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 388.10 What types of projects are authorized under this program?

State vocational rehabilitation unit in-service training projects are concerned with the staff development and training of State vocational rehabilitation unit personnel in order to assure an improved level of competence in serving State unit clients and to assist in expanding and improving vocational rehabilitation services for handicapped individuals, especially those with the most severe handicaps.

(Authority: Sec. 304(b) of the Act; 29 U.S.C. 774(b))

§ 388.11 What specific activities may be supported under this program?

(a) Training activities supported under a State vocational rehabilitation unit in-service training grant focus primarily on program areas that are essential to the State unit's operation, or on skill areas that will enable staff personnel to improve their ability to function on their job, or prepare for positions of greater responsibility within the unit, or to correct deficiencies identified in the State program.

(b) Training methods may include—

(1) The development of State unit training institutes concerned with special aspects of State unit administration or service provision;

(2) Attendance for individual employees or groups of employees at special courses conducted in cooperation with an educational institution;

(3) Individualized directed study in priority areas of State unit service or practice; and

(4) Maintenance of agency instructional library resources for books, films, tapes and other resources.

(Authority: Sec. 304(b) of the Act; 29 U.S.C. 744(b))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 388.30 What selection criteria does the Secretary use in this program?

(a) *Plan of operation.* (25 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(e).

(f) *Evidence of need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for the in-service training has been adequately justified.

(2) The Secretary looks for information that shows—

(i) The State unit has conducted a needs assessment of the in-service training needs of State unit employees; and

(ii) The State unit in-service training plan responds to needs identified on the basis of the training needs assessment.

(g) *Relevance to State/Federal rehabilitation service program.* (10 points)

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State/Federal rehabilitation service program.

(2) The Secretary looks for information that shows the proposed project can be expected to improve the competence of State vocational rehabilitation unit personnel in providing vocational rehabilitation services to handicapped individuals or in otherwise contributing to the more effective management of the State unit program.

(h) *Nature and scope of training program.* (15 points)

(1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed training program content.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the training activities reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The program primarily includes an integrated sequence of—

(A) Workshops, seminars, and other special courses for counselors and other classes of State unit personnel concerned with State unit procedures;

(B) Concentrated training activities focusing on improving State unit staff skills in working with specific groups of severely handicapped persons; and

(C) Directed individualized or group staff development activities designed to enable selected staff to acquire special skills.

(Authority: Sec. 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 388.40 What are the matching requirements?

The Secretary may make grants for paying part of the costs of projects under this program. The grantee must provide at least 10 percent of the total costs of the project.

(Authority: Sec. 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 744(a))

§ 388.41 What are the allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530-75.562, the following items are allowable under State vocational rehabilitation unit in-service training projects:

(a) Trainee per diem costs;

(b) Trainee travel in connection with a training course; and

(c) Trainee tuition and fees.

(Authority: Sec. 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774(a))

PART 389—REHABILITATION CONTINUING EDUCATION PROGRAMS

Subpart A—General

Sec.
389.1 What is the Rehabilitation Continuing Education Program?
389.2 Who is eligible for assistance under this program?
389.3 What regulations apply to this program?
389.4 What definitions apply to this program?

Sec.

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

389.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

389.30 What selection criteria does the Secretary use in this program?

Subpart E—What Conditions Must Be Met by a Grantee?

389.40 What are the matching requirements?
389.41 What are allowable costs?

AUTHORITY: Secs. 12(c) and 304 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 711(c) and 774), unless otherwise noted.

SOURCE: 45 FR 86385, Dec. 30, 1980, unless otherwise noted.

Subpart A—General

§ 389.1 What is the Rehabilitation Continuing Education Program?

This program is designed to support training centers that serve either a Federal region or another geographical area and provide for a broad integrated sequence of training activities that focus on meeting recurrent and common training needs of employed rehabilitation personnel throughout a multi-State geographical area.

(Authority: Sec. 304 of the Act; 29 U.S.C. 774)

§ 389.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: Sec. 304(a) of the Act; 29 U.S.C. 774(a))

§ 389.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 385 (Rehabilitation Training); and

(b) The regulations in this Part 389.

(Authority: Sec. 304 of the Act; 29 U.S.C. 774)

§ 389.4 What definitions apply to this program?

The definitions in 34 CFR Part 385 apply to this program.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 389.10 What types of projects are authorized under this program?

Rehabilitation Continuing Education Programs—

(a) Train newly employed State agency staff at the administrative, supervisory, professional, subprofessional, or clerical levels in order to develop needs skills for effective agency performance;

(b) Provide training opportunities for experienced State agency personnel at all levels of State agency practice to upgrade their skills and to develop mastery of new program developments dealing with significant issues, priorities and legislative thrusts of the State/Federal vocational rehabilitation program; and

(c) Develop and conduct training programs for staff of—

(1) Private rehabilitation agencies and facilities which cooperate with State vocational rehabilitation units in providing vocational rehabilitation and other rehabilitation services;

(2) Centers for independent living; and

(3) Client assistance programs.

(Authority: Sec. 304(a) and (b) of the Act; 29 U.S.C. 774(a) and (b))

[45 FR 86385, Dec. 30, 1980, as amended at 50 FR 38631, Sept. 23, 1985]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 389.30 What selection criteria does the Secretary use in this program?

(a) *Plan of operation.* (25 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(e).

(f) *Evidence of need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for the Rehabilitation Continuing Education Program has been adequately justified.

(2) The Secretary looks for information that shows the need for the training program has been justified and includes an assessment of the potential of existing programs within the geographical area (including State vocational rehabilitation unit in-service training) to meet the needs for which support is sought.

(g) *Relevance to State/Federal rehabilitation service program.* (10 points)

(1) The Secretary reviews each application for information that shows the proposed project appropriately relates to the mission of the State/Federal rehabilitation service program.

(2) The Secretary looks for information that the proposed project can be expected to improve the competence of professional and other personnel employed in the rehabilitation agencies serving severely physically and mentally disabled individuals.

(h) *Nature and scope of training program.* (15 points)

(1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed training program content.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the training activities reflect content that can be expected to enable the achievement of the established project objectives of the training project.

(ii) The program and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program.

(iii) The program includes a broad intergrated sequence of training activities for employed rehabilitation workers.

(iv) The program primarily includes coursework which can be expected to be needed on a recurrent basis throughout the multi-State geographical area to be served.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 389.40 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the cost to be borne by the grantee is determined by the Secretary at the time of the grant award.

(Authority: Secs. 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774(a))

§ 389.41 What are allowable costs?

In addition to those allowable costs established under EDGAR §§ 75.530–75.562, the following items are allowable under Rehabilitation Continuing Education programs—

(a) Trainee per diem costs;

(b) Trainee travel in connection with a training course;

(c) Trainee tuition and fees; and

(d) Special accommodations for handicapped trainees.

(Authority: Secs. 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774(a))

PART 390—REHABILITATION SHORT-TERM TRAINING

Subpart A—General

Sec.
390.1 What is the Rehabilitation Short-Term Training Program?
390.2 Who is eligible for assistance under this program?
390.3 What regulations apply to this program?
390.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

390.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

390.30 What selection criteria does the Secretary use in this program?

Subpart E—What Conditions Must Be Met by a Grantee?

390.40 What are the matching requirements?
390.41 What are allowable costs?

Authority: Secs. 12(c) and 304 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 711(c) and 774), unless otherwise noted.

Source: 45 FR 86386, Dec. 30, 1980, unless otherwise noted.

Subpart A—General

§ 390.1 What is the Rehabilitation Short-Term Training Program?

This program is designed for the support of special seminars, institutes, workshops and other short-term courses in technical matters relating to the delivery of vocational, medical, social, and psychological rehabilitation services.

(Authority: Secs. 21(a)(2) and 304(a) of the Act; 29 U.S.C. 711(a)(2) and 774(a))

§ 390.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: Sec. 304(a) of the Act; 29 U.S.C. 774(a))

§ 390.3 What regulations apply to this program?

(a) 34 CFR Part 385 (Rehabilitation Training); and

(b) The regulations in this Part 390.

(Authority: Sec. 304 of the Act; 29 U.S.C. 774)

§ 390.4 What definitions apply to this program?

The definitions in 34 CFR Part 385 apply to this program.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 390.10 What types of projects are authorized under this program?

(a) Projects under this program are designed to provide short-term training and technical instruction in areas of special significance to the delivery of vocational, medical, social, and psychological rehabilitation services.

(b) Short-term training projects may be of regional or national scope.

(c) Conferences and meetings in which training is not the primary focus may not be supported under this program.

(Authority: Secs. 12(a)(2) and 304 of the Act; 29 U.S.C. 711(a)(2) and 774)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 390.30 What selection criteria does the Secretary use in this program?

(a) *Plan of operation.* (25 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(e).

(f) *Evidence of need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for the training project has been adequately justified.

(2) The Secretary looks for information that shows the need for the training project that has been established and validated in terms of its potential impact on the rehabilitation service delivery system.

(g) *Relevance to State/Federal rehabilitation service program.* (10 points)

(1) The Secretary reviews each application for information that shows the proposed project appropriately relates to the mission of the State/Federal rehabilitation service program.

(2) The Secretary looks for information that shows the proposed project relates to the mission of the State/Federal rehabilitation service program and can be expected to improve the skills and competence of personnel engaged in the administration or delivery of rehabilitation services, and others with an interest in the delivery of rehabilitation services.

(h) *Nature and scope of training program content.* (15 points)

(1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed training program content.

(2) The Secretary reviews each application for information that shows that—

(i) The educational objectives are clearly defined, measurable and achievable; and

(ii) The proposed course content and methodology to develop and implement the training can be expected to achieve the stated educational objectives.

Subpart E—What Conditions Must Be Met by a Grantee?

§ 390.40 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the award.

(Authority: Secs. 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774(a))

§ 390.41 What are allowable costs?

(a) In addition to those allowable costs established in EDGAR §§ 75.530–75.562, the following items are allowable under short-term training projects:

(1) Trainee per diem costs;

(2) Trainee travel in connection with a training course;

(3) Trainee registration fees; and

(4) Special accommodations for handicapped trainees.

(b) The preparation of training materials may not be supported under a short-term training grant unless the materials are essential for the conduct of the seminar, institute, workshop or other short course for which the grant support has been provided.

(Authority: Secs. 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 744(a))

PART 395—VENDING FACILITY PROGRAM FOR THE BLIND ON FEDERAL AND OTHER PROPERTY

Subpart A—Definitions

Sec.

395.1 Terms.

Subpart B—The State Licensing Agency

395.2 Application for designation as a State licensing agency; general.
395.3 Application for designation as State licensing agency; content.
395.4 State rules and regulations.
Sec.
395.5 Approval of application for designation a State licensing agency.
395.6 Vendor ownership of vending facilities.
395.7 The issuance and conditions of licenses.
395.8 Distribution and use of income from vending machines on Federal property.
395.9 The setting aside of funds by the State licensing agency.
395.10 The maintenance and replacement of vending facility equipment.
395.11 Training program for blind individuals.
395.12 Access to program and financial information.
395.13 Evidentiary hearings and arbitration of vendor complaints.
395.14 The State Committee of Blind Vendors.
395.15 Use of nominee agreements.
395.16 Permit for the establishment of vending facilities.
395.17 Suspension of designation as State licensing agency.

Subpart C—Federal Property Management

395.30 The location and operation of vending facilities for blind vendors on Federal property.
395.31 Acquisition and occupation of Federal property.
395.32 Collection and distribution of vending machine income from vending machines on Federal property.
395.33 Operation of cafeterias by blind vendors.
395.34 Application for permits.
395.35 Terms of permit.
395.36 Enforcement procedures.
395.37 Arbitration of State licensing agency complaints.
395.38 Reports.

AUTHORITY: Sec. 2, 49 Stat. 1559, as amended; 20 U.S.C. 107a.

SOURCE: 42 FR 15802, Mar. 23, 1977, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980, and further redesignated at 46 FR 5417, Jan. 19, 1981.

Subpart A—Definitions

§ 395.1 Terms.

Unless otherwise indicated in this part, the terms below are defined as follows:

(a) "Act" means the Randolph-Sheppard Vending Stand Act (Pub. L. 74-732), as amended by Pub. L. 83-565 and Pub. L. 93-516, 20 U.S.C., ch. 6A, Sec 107.

(b) "Blind licensee" means a blind person licensed by the State licensing agency to operate a vending facility on Federal or other property.

(c) "Blind person" means a person who, after examination by a physician skilled in diseases of the eye or by an optometrist, whichever such person shall select, has been determined to have

(1) Not more than 20/200 central visual acuity in the better eye with correcting lenses, or

(2) An equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20°.

(d) "Cafeteria" means a food dispensing facility capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where the customer serves himself from displayed selections. A cafeteria may be fully automatic or some limited waiter or waitress service may be available and provided within a cafeteria and table or booth seating facilities are always provided.

(e) "Secretary" means the Secretary of the Rehabilitation Services Administration.

(f) "Direct competition" means the presence and operation of a vending machine or a vending facility on the same premises as a vending facility operated by a blind vendor, except that vending machines or vending facilities operated in areas serving employees the majority of whom normally do not have direct access (in terms of uninterrupted ease of approach and the amount of time required to patronize the vending facility) to the vending facility operated by a blind vendor shall not be considered to be in direct competition with the vending facility operated by a blind vendor.

(g) "Federal property" means any building, land, or other real property owned, leased, or occupied by any department, agency or instrumentality of the United States (including the Department of Defense and the United States Postal Service), or any other instrumentality wholly owned by the United States, or by any department or agency of the District of Columbia or any territory or possession of the United States.

(h) "Individual location installation or facility" means a single building or a self-contained group of buildings. In order for two or more buildings to be considered to be a self-contained group of buildings, such buildings must be located in close proximity to each other, and a majority of the Federal employees housed in any such building must regularly move from one building to another in the course of official business during normal working days.

(i) "License" means a written instrument issued by the State licensing agency to a blind person, authorizing such person to operate a vending facility on Federal or other property.

(j) "Management services" means supervision, inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve vending facilities operated by blind vendors. "Management services" does not include those services or costs which pertain to the on-going operation of an individual facility after the initial establishment period.

(k) "Net proceeds" means the amount remaining from the sale of articles or services of vending facilities, and any vending machine or other income accruing to blind vendors after deducting the cost of such sale and other expenses (excluding set-aside charges required to be paid by such blind vendors).

(l) "Nominee" means a nonprofit agency or organization designated by the State licensing agency through a written agreement to act as its agent in the provision of services to blind licensees under the State's vending facility program.

(m) "Normal working hours" means an eight hour work period between the approximate hours of 8:00 a.m., to 6:00 p.m., Monday through Friday.

(n) "Other property" means property which is not Federal property and on which vending facilities are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property.

(o) "Permit" means the official approval given a State licensing agency by a department, agency or instrumentality in control of the maintenance, operation, and protection of Federal property, or person in control of other property, whereby the State licensing agency is authorized to establish a vending facility.

(p) "Program" means all the activities of the licensing agency under this part related to vending facilities on Federal and other property.

(q) "Satisfactory site" means an area fully accessible to vending facility patrons and having:

(1) Effective on March 23, 1977 a minimum of 250 square feet available for the vending and storage of articles necessary for the operation of a vending facility; and

(2) Sufficient electrical plumbing, heating, and ventilation outlets for the location and operation of a vending facility in accordance with applicable health laws and building codes.

(r) "Secretary" means the Secretary of Education.

(s) "Set-aside funds" means funds which accrue to a State licensing agency from an assessment against the net proceeds of each vending facility in the State's vending facility program and any income from vending machines on Federal property which accrues to the State licensing agency.

(t) "State" means a State, territory, possession, Puerto Rico, or the District of Columbia.

(u) "State vocational rehabilitation agency" means that agency in the State providing vocational rehabilitation services to the blind as the sole State agency under a State plan for vocational rehabilitation services approved pursuant to the provisions of the Rehabilitation Act of 1973 (29 U.S.C., ch. 16).

(v) "State licensing agency" means the State agency designated by the Secretary under this part to issue licenses to blind persons for the operation of vending facilities on Federal and other property.

(w) "United States" includes the several States, territories, and possessions of the United States, Puerto Rico, and the District of Columbia.

(x) "Vending facility" means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by blind licensees and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of changes for any lottery authorized by State law and conducted by an agency of a State within such State.

(y) "Vending machine", for the purpose of assigning vending machine income under this part, means a coin or currency operated machine which dispenses articles or services, except that those machines operated by the United States Postal Service for the sale of postage stamps or other postal products and services, machines providing services of a recreational nature, and telephones shall not be considered to be vending machines.

(z) "Vending machine income" means receipts (other than those of a blind vendor) from vending machine operations on Federal property, after deducting the cost of goods sold (including reasonable service and maintenance costs in accordance with customary business practices of commercial vending concerns, where the machines are operated, serviced, or maintained by, or with the approval of, a department, agency, or instrumentality of the United States, or commissions paid (other than to a blind vendor) by a commercial vending concern which operates, services, and maintains vending machines on Federal property for, or with the approval of, a department, agency, or instrumentality of the United States.

(aa) "Vendor" means a blind licensee who is operating a vending facility on Federal or other property.

(bb) "Vocational rehabilitation services" means those services as defined in § 1361.1(ee) (1) and (2) of this chapter.

Subpart B—The State Licensing Agency

§ 395.2 Application for designation as a State licensing agency; general.

(a) An application for designation as a State licensing agency may be submitted only by the State vocational rehabilitation agency providing vocational rehabilitation services to the blind under an approved State plan for vocational rehabilitation services under Part 1361 of this chapter.

(b) Such application shall be:

(1) Submitted in writing to the Secretary;

(2) Approved by the chief executive of the State; and

(3) Transmitted over the signature of the administrator of the State agency making application.

§ 395.3 Application for designation as State licensing agency; content.

(a) An application for designation as a State licensing agency under § 395.2 shall indicate:

(1) The State licensing agency's legal authority to administer the program, including its authority to promulgate rules and regulations to govern the program;

(2) The State licensing agency's organization for carrying out the program, including a description of the methods for coordinating the State's vending facility program and the State's vocational rehabilitation program, with special reference to the provision of such post-employment services necessary to assure that the maximum vocational potential of each blind vendor is achieved;

(3) The policies and standards to be employed in the selection of suitable locations for vending facilities;

(4) The methods to be used to ensure the continuing and active participation of the State Committee of Blind Vendors in matters affecting policy and program development and administration.

(5) The policies to be followed in making suitable vending facility equipment and adequate initial stock available to a vendor;

(6) The sources of funds for the administration of the program;

(7) The policies and standards governing the relationship of the State licensing agency to the vendors, including their selection, duties, supervision, transfer, promotion, financial participation, rights to a full evidentiary hearing concerning a State licensing agency action, and, where necessary, rights for the submittal of complaints to an arbitration panel;

(8) The methods to be followed in providing suitable training, including on-the-job training and, where appropriate, upward mobility training, to blind vendors;

(9) The arrangements made or contemplated, if any, for the utilization of the services of any nominee under § 395.15; the agreements therefor and the services to be provided; the procedures for the supervision and control of the services provided by such nominee and the methods used in evaluating services received, the basis for remuneration, and the fiscal controls and accounting procedures;

(10) The arrangements made or contemplated, if any, for the vesting in accordance with the laws of the State, of the right, title to, and interest in vending facility equipment or stock (including vending machines), used in the program, in a nominee to hold such right, title to, and interest for program purposes; and

(11) The assurances of the State licensing agency that it will:

(i) Cooperate with the Secretary in applying the requirements of the Act in a uniform manner;

(ii) Take effective action, including the termination of licenses, to carry out full responsibility for the supervision and management of each vending facility in its program in accordance with its established rules and regulations, this part, and the terms and conditions governing the permit;

(iii) Submit promptly to the Secretary for approval a description of any changes in the legal authority of the State licensing agency, its rules and regulations, blind vendor agreements, schedules for the setting aside of funds, contractual arrangements for the furnishing of services by a nominee, arrangements for carrying general liability and product liability insurance, and any other matters which form a part of the application;

(iv) If it intends to set aside, or cause to be set aside, funds from the net proceeds of the operation of vending facilities, obtain a prior determination by the Secretary that the amount of such funds to be set aside is reasonable;

(v) Establish policies against discrimination of any blind vendor on the basis of sex, age, physical or mental impairment, creed, color, national origin, or political affiliation;

(vi) Furnish each vendor a copy of its rules and regulations and a description of the arrangements for providing services, and take adequate steps to assure that each vendor understands the provisions of the permit and any agreement under which he operates, as evidenced by his signed statements:

(vii) Submit to an arbitration panel those grievances of any vendor unresolved after a full evidentiary hearing;

(viii) Adopt accounting procedures and maintain financial records in a manner necessary to provide for each vending facility and for the State's vending facility program a classification of financial transactions in such detail as is sufficient to enable evaluation of performance; and

(ix) Maintain records and make reports in such form and containing such information as the Secretary may require, make such records available for audit purposes, and comply with such provisions as the Secretary may find necessary to assure the correctness and verification of such reports.

(b) An application submitted under § 395.2 shall be accompanied by a copy of State rules and regulations affecting the administration and operation of the State's vending facility program.

§ 395.4 State rules and regulations.

(a) The State licensing agency shall promulgate rules and regulations which have been approved by the Secretary and which shall be adequate to assure the effective conduct of the State's vending facility program (including State licensing agency procedures covering the conduct of full evidentiary hearings) and the operation of each vending facility in accordance with this part and with the requirements and conditions of each department, agency, and instrumentality in control of the maintenance, operation, and protection of Federal property, including the conditions contained in permits, as well as in all applicable Federal and State laws, local ordinances and regulations.

(b) Such rules and regulations and amendments thereto shall be filed or published in accordance with State law.

(c) Such rules and regulations shall include provisions adequate to insure that the right, title to, and interest in each vending facility used in the program and the stock will be vested in accordance with the laws of the State in only the following:

(1) The State licensing agency; or

(2) Its nominee, subject to the conditions specified in § 395.15(b); or

(3) The vendor, in accordance with State determination.

(d) Notwithstanding the provisions of paragraph (c) of this section, any right, title to, or interest which existed on June 30, 1955, in stock may continue so long as:

(1) The interest is in the stock of a facility established under the program prior to July 1, 1955, and

(2) The vendor was licensed in the program (whether or not for the operation of the vending facility in question) prior to July 1, 1955.

§ 395.5 Approval of application for designation as State licensing agency.

When the Secretary determines that an application submitted by a State vocational rehabilitation agency under § 395.2, and the accompanying rules and regulations indicate a plan of program operations which will stimulate and enlarge the economic opportunities for the blind, and which will meet all other requirements of this part, he shall approve the application and shall designate the applying State vocational rehabilitation agency as the State licensing agency.

§ 395.6 Vendor ownership of vending facilities.

(a) If a State licensing agency determines under § 395.4(c) that the right, title to, and interest in a vending facility may be vested in the blind vendor, the State licensing agency shall enter into a written agreement with each vendor who is to have such ownership. Such agreement shall contain in full the terms and conditions governing such ownership in accordance with criteria in the State licensing agency's regulations, this part, and the terms and conditions of the permit. The criteria established to govern the determination that the title may be so vested shall contain reasonable provisions to enable a vendor to purchase vending facility equipment and to ensure that no individual will be denied the opportunity to become a vendor because of his inability to purchase the vending facility equipment or the initial stock;

(b) The State licensing agency shall establish in writing and maintain policies determining whether the vendor-owner or the State licensing agency shall be required to maintain the vending facility in good repair and in an attractive condition and replace worn-out or obsolete equipment; and if the former, such policies shall provide that upon such vendor-owner's failure to do so, the State licensing agency may make the necessary maintenance, replacement, or repairs and make equitable arrangements for reimbursement;

(c) Where the vendor owns such equipment and is required to maintain the vending facility in good repair and in an attractive condition and replace worn-out or obsolete equipment, or agrees to purchase additional new equipment, service charges for such purposes shall be equitably reduced and the method for determining such amount shall be established by the State licensing agency in writing;

(d) Where the vendor owns such equipment, the State licensing agency shall retain a first option to repurchase such equipment, and in the event the vendor-owner dies, or for any other reason ceases to be a licensee, or transfers to another vending facility, ownership of such equipment shall become vested in the State licensing agency for transfer to a successor licensee subject to an obligation on its part to pay to such vendor-owner or his estate, the fair value therein; and

(e) The vendor-owner, his personal representative or next of kin shall be entitled to an opportunity for a full evidentiary hearing with respect to the determination of the amount to be paid by the State licensing agency for a vendor's ownership in the equipment. When the vendor-owner is dissatisfied with any decision rendered as a result of such hearing, he may file a complaint with the Secretary under § 395.13 to request the convening of an ad hoc arbitration panel.

§ 395.7 The issuance and conditions of licenses.

(a) The State licensing agency shall establish in writing and maintain objective criteria for licensing qualified applicants, including a provision for giving preference to blind persons who are in need of employment. Such criteria shall also include provisions to assure that licenses will be issued only to persons who are determined by the State licensing agency to be:

(1) Blind;

(2) Citizens of the United States; and

(3) Certified by the State vocational rehabilitation agency as qualified to operate a vending facility.

(b) The State licensing agency shall provide for the issuance of licenses for an indefinite period but subject to suspension or termination if, after affording the vendor an opportunity for a full evidentiary hearing, the State licensing agency finds that the vending facility is not being operated in accordance with its rules and regulations, the terms and conditions of the permit, and the terms and conditions of the agreement with the vendor.

(c) The State licensing agency shall further establish in writing and maintain policies which have been developed with the active participation of the State Committee of Blind Vendors and which govern the duties, supervision, transfer, promotion, and financial participation of the vendors. The State licensing agency shall also establish procedures to assure that such policies have been explained to each blind vendor.

§ 395.8 Distribution and use of income from vending machines on Federal property.

(a) Vending machine income from vending machines on Federal property which has been disbursed to the State licensing agency by a property managing department, agency, or instrumentality of the United States under § 395.32 shall accrue to each blind vendor operating a vending facility on such Federal property in each State in an amount not to exceed the average net income of the total number of blind vendors within such State, as determined each fiscal year on the basis of each prior year's operation, except that vending machine income shall not accrue to any blind vendor in any amount exceeding the average net income of the total number of blind vendors in the United States. No blind vendor shall receive less vending machine income than he was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this paragraph. No limitation shall be imposed on income from vending machines, combined to create a vending facility, when such facility is maintained, serviced, or operated by a blind vendor. Vending machine income disbursed by a property managing department, agency or instrumentality of the United States to a State licensing agency in excess of the amounts eligible to accrue to blind vendors in accordance with this paragraph shall be retained by the appropriate State licensing agency.

(b) The State licensing agency shall disburse vending machine income to blind vendors within the State on at least a quarterly basis.

(c) Vending machine income which is retained under paragraph (a) of this section by a State licensing agency shall be used by such agency for the establishment and maintenance of retirement or pension plans, for health insurance contributions, and for the provision of paid sick leave and vacation time for blind vendors in such State, if it is so determined by a majority vote of blind vendors licensed by the State licensing agency, after such agency has provided to each such vendor information on all matters relevant to such purposes. Any vending machine income not necessary for such purposes shall be used by the State licensing agency for the maintenance and replacement of equipment, the purchase of new equipment, management services, and assuring a fair minimum return to vendors. Any assessment charged to blind vendors by a State licensing agency shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

§ 395.9 The setting aside of funds by the State licensing agency.

(a) The State licensing agency shall establish in writing the extent to which funds are to be set aside or caused to be set aside from the net proceeds of the operation of the vending facilities and, to the extent applicable, from vending machine income under § 395.8(c) in an amount determined by the Secretary to be reasonable.

(b) Funds may be set aside under paragraph (a) of this section only for the purposes of:

(1) Maintenance and replacement of equipment;

(2) The purchase of new equipment;

(3) Management services;

(4) Assuring a fair minimum of return to vendors; or

(5) The establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if it is so determined by a majority vote of blind vendors licensed by the State licensing agency, after such agency provides to each such vendor information on all matters relevant to such proposed purposes.

(c) The State licensing agency shall further set out the method of determining the charge for each of the above purposes listed in paragraph (b) of this section, which will be determined with the active participation of the State Committee of Blind Vendors and which will be designed to prevent, so far as is practicable, a greater charge for any purpose than is reasonably required for that purpose. The State licensing agency shall maintain adequate records to support the reasonableness of the charges for each of the purposes listed in this section, including any reserves necessary to assure that such purposes can be achieved on a consistent basis.

§ 395.10 The maintenance and replacement of vending facility equipment.

The State licensing agency shall maintain (or cause to be maintained) all vending facility equipment in good repair and in an attractive condition and shall replace or cause to be replaced worn-out and obsolete equipment as required to ensure the continued successful operation of the facility.

§ 395.11 Training program for blind individuals.

The State licensing agency shall ensure that effective programs of vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials, shall be provided to blind individuals as vocational rehabilitation services under the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516). Such programs shall include on-the-job training in all aspects of vending facility operation for blind persons with the capacity to operate a vending facility, and upward mobility training (including further education and additional training or retraining for improved work opportunities) for all blind licensees. The State licensing agency shall further ensure that post-employment services shall be provided to blind vendors as vocational rehabilitation services as necessary to assure that the maximum vocational potential of such vendors is achieved and suitable employment is maintained within the State's vending facility program.

§ 395.12 Access to program and financial information.

Each blind vendor under this part shall be provided access to all financial data of the State licensing agency relevant to the operation of the State vending facility program, including quarterly and annual financial reports, provided that such disclosure does not violate applicable Federal or State laws pertaining to the disclosure of confidential information. Insofar as practicable, such data shall be made available in braille or recorded tape. At the request of a blind vendor State licensing agency staff shall arrange a convenient time to assist in the interpretation of such financial data.

§ 395.13 Evidentiary hearings and arbitration of vendor complaints.

(a) The State licensing agency shall specify in writing and maintain procedures whereby such agency affords an opportunity for a full evidentiary hearing to each blind vendor (which procedures shall also apply to cases under § 395.6(e)) dissatisfied with any State licensing agency action arising from the operation or administration of the vending facility program. When such blind vendor is dissatisfied with any action taken or decision rendered as a result of such hearing, he may file a complaint with the Secretary. Such complaint shall be accompanied by all available supporting documents, including a statement of the decision which was rendered and the reasons in support thereof.

(b) The filing of a complaint under paragraph (a) of this section with either the State licensing agency or the Secretary shall indicate consent by the blind vendor for the release of such information as is necessary for the conduct of a full evidentiary hearing or the hearing of an ad hoc arbitration panel.

(c) Upon receipt of a complaint filed by a blind vendor which meets the requirements established by the Secretary, the Secretary shall convene an ad hoc arbitration panel which shall, in accordance with the provisions of 5 U.S.C. chapter 5, subchapter II, give notice, conduct a hearing, and render its decision which shall be final and binding on the parties except that such decision shall be subject to appeal and review as a final agency action for purposes of the provisions of 5 U.S.C. chapter 7.

(d) The arbitration panel convened by the Secretary to hear the grievances of blind vendors shall be composed of three members appointed as follows:

(1) One individual designated by the State licensing agency;

(2) One individual designated by the blind vendor; and

(3) One individual not employed by the State licensing agency or, where appropriate, its parent agency, who shall be jointly designated by the other members of the panel and who shall serve as chairman of the panel.

(e) If either the State licensing agency or the blind vendor fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

(f) The decisions of an arbitration panel convened by the Secretary under this section shall be matters of public record and shall be published in the FEDERAL REGISTER.

(g) The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses which shall be published in the FEDERAL REGISTER.

(h) The provisions of this section shall not require the participation of grantors of permits for the operation of vending facilities on property other than Federal property.

§ 395.14 The State Committee of Blind Vendors.

(a) The State licensing agency shall provide for the biennial election of a State Committee of Blind Vendors which, to the extent possible, shall be fully representative of all blind vendors in the State program on the basis of such factors as geography and vending facility type with a goal of providing for proportional representation of blind vendors on Federal property and blind vendors on other property. Participation by any blind vendor in any election shall not be conditioned upon the payment of dues or any other fees.

(b) The State Committee of Blind Vendors shall:

(1) Actively participate with the State licensing agency in major administrative decisions and policy and program development decisions affecting the overall administration of the State's vending facility program;

(2) Receive and transmit to the State licensing agency grievances at the request of blind vendors and serve as advocates for such vendors in connection with such grievances;

(3) Actively participate with the State licensing agency in the development and administration of a State system for the transfer and promotion of blind vendors;

(4) Actively participate with the State licensing agency in the development of training and retraining programs for blind vendors; and

(5) Sponsor, with the assistance of the State licensing agency, meetings and instructional conferences for blind vendors within the State.

§ 395.15 Use of nominee agreements.

(a) The State licensing agency may enter into an agreement whereby another agency or organization undertakes to furnish services to blind vendors. Such agreement shall be in writing and shall contain provisions which:

(1) Clearly insure the retention by the State licensing agency of full responsibility for the administration and operation of all phases of the program;

(2) Specify the type and extent of the services to be provided under such agreement;

(3) Provide that no set-aside charges will be collected from blind vendors except as specified in such agreement;

(4) Specify that no nominee will be allowed to exercise any function with respect to funds for the purchase of new equipment or for assuring a fair minimum of return to vendors, except to collect and hold solely for disposition in accordance with the order of the State licensing agency any charges authorized for those purposes by the licensing agency; and

(5) Specify that only the State licensing agency shall have control with respect to selection, placement, transfer, financial participation and termination of the vendors, and the preservation, utilization, and disposition of program assets.

(b) If the State licensing agency permits any agency or organization other than a vendor to hold any right, title to, or interest in vending facilities or stock, the arrangement shall be one permitted by State law and shall specify in writing that all such right, title to, or interest is held by such agency or organization as the nominee of the State licensing agency for program purposes and subject to the paramount right of the State licensing agency to direct and control the use, transfer, and disposition of such vending facilities or stock.

§ 395.16 Permit for the establishment of vending facilities.

Prior to the establishment of each vending facility, other than a cafeteria, the State licensing agency shall submit an application for a permit setting forth the location, the amount of space necessary for the operation of the vending facility; the type of facility and equipment, the number, location and type of vending machines and other terms and conditions desired to be included in the permit. Such application shall be submitted for the approval of the head of the Federal property managing department, agency, or instrumentality. When an application is not approved, the head of the Federal property managing department, agency, or instrumentality shall advise the State licensing agency in writing and shall indicate the reasons for the disapproval.

§ 395.17 Suspension of designation as State licensing agency.

(a) If the Secretary has reason to believe that, in the administration of the program, there is a failure on the part of any State licensing agency to comply substantially with the Act and this part, he shall so inform such agency in writing, setting forth, in detail, the areas in which there is such failure and giving it a reasonable opportunity to comply.

(b) If, after the lapse of a reasonable time, the Secretary is of the opinion that such failure to comply still continues and that the State licensing agency is not taking the necessary steps to comply, he shall offer to such agency, by reasonable notice in writing thereto and to the chief executive of the State, an opportunity for a hearing before the Secretary (or person designated by the Secretary) to determine whether there is a failure on the part of such agency to comply substantially with the provisions of the Act and of this part.

(c) If it is thereupon determined that there is a failure on the part of such agency to comply substantially with the Act and this part, appropriate written notice shall be given to such agency and to the chief executive of the State suspending such agency's designation as licensing agency effective 90 days from the date of such notice. A copy of such written notice shall be given to each department, agency, or instrumentality of the United States responsible for the maintenance, operation, and protection of Federal property on which vending machines subject to the requirements of § 395.32 are located in the State. Upon the suspension of such designation, vending machine income from vending machines on Federal property due for accrual to the State licensing agency under § 395.32 shall be retained in escrow by such department, agency, or instrumentality of the United States responsible for the maintenance, operation and protection of the Federal property on which such vending machines are located, pending redesignation of the State licensing agency or rescission of the suspension under paragraph (e) of this section.

(d) If, before the expiration of such 90 days, the Secretary (or person designated by him) determines that the State licensing agency is taking the necessary steps to comply, he may postpone the effective date of such suspension for such time as he deems necessary in the best interest of the program.

(e) If, prior to the effective date of such suspension, the Secretary (or person designated by him) finds that there is no longer a failure on the part of the State licensing agency to comply substantially with the provisions of the Act and this part, he shall so notify the agency, the chief executive of the State, and each Federal department, agency, or instrumentality required to place funds in escrow under paragraph (c) of this section, in which event the suspension of the designation shall not become effective and the requirement to place funds in escrow shall be terminated.

Subpart C—Federal Property Management

§ 395.30 The location and operation of vending facilities for blind vendors on Federal property.

(a) Each department, agency, or instrumentality of the United States in control of the maintenance, operation, and protection of Federal property shall take all steps necessary to assure that, wherever feasible, in light of appropriate space and potential patronage, one or more vending facilities for operation by blind licensees shall be located on all Federal property *Provided* that the location or operation of such facility or facilities would not adversely affect the interests of the United States. Blind persons licensed by State licensing agencies shall be given priority in the operation of vending facilities on any Federal property.

(b) Any limitation on the location or operation of a vending facility for blind vendors by a department, agency or instrumentality of the United States based on a finding that such location or operation or type of location or operation would adversely affect the interests of the United States shall be fully justified in writing to the Secretary who shall determine whether such limitation is warranted. A determination made by the Secretary concerning such limitation shall be binding on any department, agency, or instrumentality of the United States affected by such determination. The Secretary shall publish such determination in the FEDERAL REGISTER along with supporting documents directly relating to the determination.

(c) Priority in the operation of vending facilities in areas administered by the National Park Service or the National Aeronautics and Space Administration shall be given to blind vendors. Priority in the awarding of contracts for the operation of concessions in such areas when such concessions provide accommodations, facilities, and services of a scope or of a character not generally available in vending facilities operated by blind vendors shall be given in accordance with the provisions of the Concession Policy Act (Pub. L. 98-249, 16 U.S.C. 1) or the National Aeronautics and Space Act of 1958, as amended (Pub. L. 85-568, 42 U.S.C. 2473). The provisions of this part shall not apply when all accommodations, facilities, or services in such areas are operated by a single responsible concessioner.

§ 395.31 Acquisition and occupation of Federal property.

(a) Effective January 2, 1975, no department, agency, or instrumentality of the United States shall undertake to acquire by ownership, rent, or lease, or to otherwise occupy, in whole or in part, any building unless it is determined that such building includes a satisfactory site or sites for the location and operation of a vending facility by a blind vendor. In those cases where a purchase contract, an agreement to lease, or other similar commitment was entered into prior to January 2, 1975, the provisions of this paragraph shall not apply.

(b) Effective January 2, 1975, no department, agency, or instrumentality of the United States, shall undertake to occupy, in whole or in part, any building which is to be constructed, substantially altered, or renovated, or in the case of a building which is occupied on January 2, 1975 by a department, agency, or instrumentality of the United States, no such department, agency, or instrumentality shall undertake to substantially alter or renovate such building, unless it is determined that the design for such construction, substantial alteration, or renovation includes a satisfactory site or sites for the location and operation of a vending facility by a blind vendor. In those cases where a design contract or other similar commitment was entered into prior to January 2, 1975, the provisions of this paragraph shall not apply. For purposes of this paragraph, "substantial alteration or renovation of a building" means a permanent material change in the floor area of such building which would render such building appropriate for the location and operation of a vending facility by a blind vendor.

(c) The determination that a building contains a satisfactory site or sites under paragraph (a) or (b) of this section shall be made after consultation between the State licensing agency and the head of the department, agency, or instrumentality of the United States which is planning to acquire or otherwise occupy such building. In order to make such determination, effective on the publication date of this part each such department, agency, or instrumentality shall provide to the appropriate State licensing agency written notice of its intention to acquire or otherwise occupy such building. Such written notice shall be by certified or registered mail with return receipt and shall be provided as early as practicable but no later than 60 days prior to such intended action. The written notice shall indicate that a satisfactory site or sites for the location and operation of a vending facility by blind persons is included in the plans for the building to be acquired or otherwise occupied and shall further assure that the State licensing agency shall be afforded the opportunity to determine whether such building includes a satisfactory site or sites for a vending facility. The written notice shall further assure that the State licensing agency, subject to the approval of the head of the Federal property managing department, agency, or instrumentality, shall be offered the opportunity to select the location and type of vending facility to be operated by a blind vendor prior to the completion of the final space layout of the building. The receipt of such written notice shall be acknowledged in writing promptly by the State licensing agency but no later than within 30 days and the State licensing agency shall indicate at that time whether it is interested in establishing a vending facility. A copy of the written notice to the State licensing agency and the State licensing agency's acknowledgement shall be provided to the Secretary.

(d) When, after a written notice has been provided under paragraph (c) of this section, the State licensing agency determines that the number of persons using the Federal property is or will be insufficient to support a vending facility, and the Secretary concurs with such determination, the provisions of paragraphs (a) and (b) of this section shall not apply. The provisions of paragraphs (a) and (b) of this section shall also not apply when fewer than 100 Federal Government employees are or will be located during normal working hours in the building to be acquired or otherwise occupied or when such building contains less than 15,000 square feet of interior space to be utilized for Federal Government purposes in the case of buildings in which services are to be provided to the public.

(e) The operation of a vending facility established under pre-existing arrangements shall not be affected by the provisions of this section. The provisions of this section shall further not preclude future arrangements under which vending facilities to be operated by blind vendors may be established in buildings of a size or with an employee population less than that specified in paragraph (d) of this section: *Provided*, That both the State licensing agency and the Federal property managing department, agency or instrumentality concur in such establishment.

(f) Each department, agency, and instrumentality of the United States, when leasing property in privately owned buildings, shall make every effort to lease property capable of accommodating a vending facility. When, however, such department, agency, or instrumentality is leasing part of a privately owned building in which prior to the execution of the lease, the lessor or any of his tenants had in operation or had entered into a contract for the operation of a restaurant or other food facility in a part of the building not included in such lease and the operation of a vending facility by a blind vendor would be in proximate and substantial direct competition with such restaurant or other food facility, the provisions of paragraphs (a), (b), and (c) of this section shall not apply.

§ 395.32 Collection and distribution of vending machine income from vending machines on Federal property.

(a) The on-site official responsible for the Federal property of each property managing department, agency, or instrumentality of the United States, in accordance with established procedures of such department, agency, or instrumentality, shall be responsible for the collection of, and accounting for, vending machine income from vending machines on Federal property under his control and shall otherwise ensure compliance with the provisions of this section.

(b) Effective January 2, 1975, 100 per centum of all vending machine income from vending machines on Federal property which are in direct competition with a vending facility operated by a blind vendor shall accure to the State licensing agency which shall disburse such income to such blind vendor operating such vending facility on such property provided that the total amount of such income accruing to such blind vendor does not exceed the maximum amount determined under § 395.8(a). In the event that there is income from such vending machines in excess of the maximum amount which may be disbursed to the blind vendor under § 395.8(a), such additional income shall accrue to the State licensing agency for purposes determined in accordance with § 395.8(c).

(c) Effective January 2, 1975, 50 per centum of all vending machine income from vending machines on Federal property which are not in direct competition with a vending facility operated by a blind vendor shall accrue to the State licensing agency which shall disburse such income to the blind vendor operating such vending facility on such property. In the event that there is no blind vendor, such income shall accrue to the State licensing agency, except as indicated under paragraph (d) of this section. The total amount of such income disbursed to such blind vendor shall not exceed the maximum amount determined under § 395.8(a). In the event that there is income from such vending machines in excess of the maximum amount which may accrue to the blind vendor under § 395.8(a), such additional income shall accrue to the State licensing agency for purposes determined in accordance with § 395.8(c).

(d) Effective January 2, 1975, 30 per centum of all vending machine income from vending machines, which are not in direct competition with a vending facility operated by a blind vendor and which are on Federal property at which at least 50 per centum of the total hours worked on the premises occurs during a period other than normal working hours, shall accrue to the State licensing agency which shall disburse such income to the blind vendor operating a vending facility on such property. In the event that there is no blind vendor on such property, such income shall accrue to the State licensing agency. The total amount of such income disbursed to such blind vendor shall not exceed the maximum amount determined under § 395.8(a). In the event that there is income from such vending machines in excess of the maximum amount which may be disbursed to the blind vendor under § 395.8(a), such additional income shall accrue to the State licensing agency for purposes determined in accordance with § 395.8(c).

(e) The determination that a vending machine on Federal property is in direct competition with a vending facility operated by a blind vendor shall be the responsibility of the on-site official responsible for the Federal property of each property managing department, agency or instrumentality of the United States, subject to the concurrence of the State licensing agency.

(f) In the case of vending machine income which, prior to the effective date of this part, has been disbursed to a blind vendor by a property managing department, agency, or instrumentality from proceeds which accrued from operations subsequent to January 2, 1975, pursuant to agreements in effect prior to such time, such income may be deducted, at the discretion of such property managing department, agency or instrumentality, from vending machine income due to the State licensing agency under paragraphs (b), (c), or (d) of this section.

(g) The collection of vending machine income and its disbursement to the appropriate State licensing agency shall be conducted on at least a quarterly basis.

(h) All arrangements pertaining to the operation of vending machines on Federal property not covered by contract with, or by permits issued to, State licensing agencies, shall be renegotiated upon the expiration of the existing contract or other arrangement for consistency with the provisions of this section.

(i) The provisions of this section shall not apply to income from vending machines within operated retail sales outlets under the control of post exchange or ships' stores systems authorized under Title 10 of the United States Code; to income from vending machines operated by the Veterans Canteen Service; or to income from vending machines not in direct competition with a blind vending facility at individual locations, installations, or facilities on Federal property the total of which at such individual locations, installations, or facilities does not exceed $3,000 annually.

(j) The provisions of this section shall not operate to preclude pre-existing or future arrangements, or regulations of departments, agencies, or instrumentalities of the United States, under which blind vendors or State licensing agencies may:

(1) Receive a greater percentage or amount of vending machine income than that specified in paragraphs (b), (c), and (d) of this section, or

(2) Receive vending machine income from individual locations, installations, or facilities on Federal property the total of which at such individual locations, installations, or facilities does not exceed $3,000 annually.

§ 395.33 Operation of cafeterias by blind vendors.

(a) Priority in the operation of cafeterias by blind vendors on Federal property shall be afforded when the Secretary determines, on an individual basis, and after consultation with the appropriate property managing department, agency, or instrumentality, that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided employees, whether by contract or otherwise. Such operation shall be expected to provide maximum employment opportunities to blind vendors to the greatest extent possible.

(b) In order to establish the ability of blind vendors to operate a cafeteria in such a manner as to provide food service at comparable cost and of comparable high quality as that available from other providers of cafeteria services, the appropriate State licensing agency shall be invited to respond to solicitations for offers when a cafeteria contract is contemplated by the appropriate property managing department, agency, or instrumentality. Such solicitations for offers shall establish criteria under which all responses will be judged. Such criteria may include sanitation practices, personnel, staffing, menu pricing and portion sizes, menu variety, budget and accounting practices. If the proposal received from the State licensing agency is judged to be within a competitive range and has been ranked among those proposals which have a reasonable chance of being selected for final award, the property managing department, agency, or instrumentality shall consult with the Secretary as required under paragraph (a) of this section. If the State licensing agency is dissatisfied with an action taken relative to its proposal, it may file a complaint with the Secretary under the provisions of § 395.37.

(c) All contracts or other existing arrangements pertaining to the operation of cafeterias on Federal property not covered by contract with, or by permits issued to, State licensing agencies shall be renegotiated subsequent to the effective date of this part on or before the expiration of such contracts or other arrangements pursuant to the provisions of this section.

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, Federal property managing departments, agencies, and instrumentalities may afford priority in the operation of cafeterias by blind vendors on Federal property through direct negotiations with State licensing agencies whenever such department, agency, or instrumentality determines, on an individual basis, that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided employees: *Provided, however,* That the provisions of paragraphs (a) and (b) of this section shall apply in the event that the negotiations authorized by this paragraph do not result in a contract.

§ 395.34 Application for permits.

Applications for permits for the operation of vending facilities other than cafeterias shall be made in writing on the appropriate form, and submitted for the review and approval of the head of the Federal property managing department, agency, or instrumentality.

§ 395.35 Terms of permit.

Every permit shall describe the location of the vending facility including any vending machines located on other than the facility premises and shall be subject to the following provisions:

(a) The permit shall be issued in the name of the applicant State licensing agency which shall:

(1) Prescribe such procedures as are necessary to assure that in the selection of vendors and employees for vending facilities there shall be no discrimination because of sex, race, age, creed, color, national origin, physical or mental disability, or political affiliation; and

(2) Take the necessary action to assure that vendors do not discriminate against any person or persons in furnishing, or by refusing to furnish, to such person or persons the use of any vending facility, including any and all services, privileges, accommodations, and activities provided thereby, and comply with Title VI of the Civil Rights Act of 1964 and regulations issued pursuant thereto.

(b) The permit shall be issued for an indefinite period of time subject to suspension or termination on the basis of compliance with agreed upon terms.

(c) The permit shall provide that:

(1) No charge shall be made to the State licensing agency for normal cleaning, maintenance, and repair of the building structure in and adjacent to the vending facility areas;

(2) Cleaning necessary for sanitation, and the maintenance of vending facilities and vending machines in an orderly condition at all times, and the installation, maintenance, repair, replacement, servicing, and removal of vending facility equipment shall be without cost to the department, agency, or instrumentality responsible for the maintenance of the Federal property; and

(3) Articles sold at vending facilities operated by blind licensees may consist of newspapers, periodicals, publications, confections, tobacco products, foods, beverages, chances for any lottery authorized by State law and conducted by an agency of a State within such State, and other articles or services as are determined by the State licensing agency, in consultation with the on-site official responsible for the Federal property of the property managing department, agency or instrumentality, to be suitable for a particular location. Such articles and services may be dispensed automatically or manually and may be prepared on or off the premises in accordance with all applicable health laws.

(d) The permit shall further provide that vending facilities shall be operated in compliance with applicable health, sanitation, and building codes or ordinances.

(e) The permit shall further provide that installation, modification, relocation, removal, and renovation of vending facilities shall be subject to the prior approval and supervision of the on-site official responsible for the Federal property of the property managing department, agency, or instrumentality, and the State licensing agency; that costs of relocations initiated by the State licensing agency shall be paid by the State licensing agency; and that costs of relocations initiated by the department, agency, or instrumentality shall be borne by such department, agency, or instrumentality.

(f) The operation of a cafeteria by a blind vendor shall be covered by a contractual agreement and not by a permit.

§ 395.36 Enforcement procedures.

(a) The State licensing agency shall attempt to resolve day-to-day problems pertaining to the operation of the vending facility in an informal manner with the participation of the blind vendor and the on-site official responsible for the property of the property managing department, agency, or instrumentality as necessary.

(b) Unresolved disagreements concerning the terms of the permit, the Act, or the regulations in this part and any other unresolved matters shall be reported in writing to the State licensing agency supervisory personnel by the Regional or other appropriate official of the Federal property managing department, agency, or instrumentality in an attempt to resolve the issue.

§ 395.37 Arbitration of State licensing agency complaints.

(a) Whenever any State licensing agency determines that any department, agency, or instrumentality of the United States which has control of the maintenance, operation, and protection of Federal property is failing to comply with the provisions of the Act or of this part and all informal attempts to resolve the issues have been unsuccessful, such licensing agency may file a complaint with the Secretary.

(b) Upon receipt of a complaint filed under paragraph (a) of this section, the Secretary shall convene an ad hoc arbitration panel which shall, in accordance with the provisions of 5 U.S.C. ch. 5, subchapter II, give notice, conduct a hearing and render its decision which shall be final and binding on the parties except that such decision shall be subject to appeal and review as a final agency action for purposes of the provisions of 5 U.S.C. ch. 7. The arbitration panel convened by the Secretary to hear complaints filed by a State licensing agency shall be composed of three members appointed as follows:

(1) One individual designated by the State licensing agency;

(2) One individual designated by the head of the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose; and

(3) One individual, not employed by the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose, who shall be jointly designated by the other members of the panel and who shall serve as chairman of the panel.

(c) If either the State licensing agency or the head of the Federal department, agency, or instrumentality fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

(d) If the panel finds that the acts or practices of any department, agency, or instrumentality are in violation of the Act or of this part, the head of any such department, agency, or instrumentality (subject to any appeal under paragraph (b) of this section) shall cause such acts or practices to be terminated promptly and shall take such other action as may be necessary to carry out the decision of the panel.

(e) The decisions of an arbitration panel convened by the Secretary under this section shall be matters of public record and shall be published in the FEDERAL REGISTER.

(f) The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses which shall be published in the FEDERAL REGISTER.

§ 395.38 Reports.

At the end of each fiscal year, each property managing department, agency, or instrumentality of the United States shall report to the Secretary the total number of applications for vending facility locations received from State licensing agencies, the number accepted, the number denied, the number still pending, the total amount of vending machine income collected and the amount of such vending machine income disbursed to the State licensing agency in each State.

PART 396—TRAINING OF INTERPRETERS FOR DEAF INDIVIDUALS

Subpart A—General

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AUTHORITY: Sec. 304(d) of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602, 92 Stat. 2970, (29 U.S.C. 774(d)), unless otherwise noted.

SOURCE: 50 FR 32679, Aug. 13, 1985, unless otherwise noted.

Subpart A—General

§ 396.1 What is the Training of Interpreters for Deaf Individuals Program?

(a) The Training of Interpreters for Deaf Individuals Program is designed to assist in providing a sufficient number of skilled interpreters to meet the communications needs of deaf individuals by—

(1) Training manual and oral interpreters throughout the country for employment in public and private agencies, schools, and other institutions involved in health, education, welfare, rehabilitation and employment; and

(2) Ensuring the maintenance of the skills of interpreters engaged in programs serving deaf people, and providing opportunities for interpreters to raise their level of competence.

(Authority: Sec. 304(d) of the Act; 29 U.S.C. 774(d))

§ 396.2 Who is eligible for assistance under this program?

Public and private nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under the Training of Interpreters for Deaf Individuals Program.

(Authority: Sec. 304(d) of the Act; 29 U.S.C. 774(d))

§ 396.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR), established in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that apply to Department Regulations); and

(4) Part 78 (Education Appeal Board).

(b) The regulations in this Part 396.

(Authority: Sec. 304(d) of the Act; 29 U.S.C. 774(d))

§ 396.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Equipment
Grant
Grantee
Nonprofit
Private
Project
Project period
Public

Secretary
Supplies

(Authority: Sec. 304(d) of the Act; 29 U.S.C. 774(d))

(b) *Definitions that also apply to this part.* The following definitions also apply to this part:

"Interpreter for deaf individuals" is an individual who utilizes sign language skills or oral interpreting skills to facilitate communications between hearing and hearing-impaired individuals.

"Existing program that has demonstrated its capacity for providing interpreter training services" means an established program with—

(1) A record of training interpreters who are serving the deaf community; and

(2) An established curriculum that is suitable for training interpreters.

(Authority: Sec. 304(d) of the Act; 29 U.S.C. 774(d))

§§ 396.5—396.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 396.10 What types of projects are authorized under this program?

The Secretary provides assistance for projects that provide training in manual and oral interpreting skills for persons preparing to serve, or already serving, as interpreters for deaf individuals in public and private agencies, schools, and other service-providing facilities.

(Authority: Sec. 304(d) of the Act; 29 U.S.C. 774(d))

§§ 396.11—396.19 [Reserved]

Subpart C—How Does One Apply for a Grant?

§ 396.20 What must be included in an application for a grant?

Each applicant shall include in the application—

(a) A description of the manner in which the proposed interpreter training program will be developed and operated during the five-year period following the award of the grant;

(b) A description of the geographical area to be served by the project;

(c) A demonstraton of the applicant's capacity or potential for providing training for interpreters for deaf individuals; and

(d) Assurances that—

(1) Any interpreter trained or retrained under this program will meet such minimum standards of competency as the Secretary may establish;

(2) To the extent appropriate, the grantee will provide for the training or retraining (including short-term and in-service training) of teachers who are involved in providing instruction to deaf individuals but who are not certified as teachers of deaf individuals; and

(3) Funds for in-service training will be provided only through funds appropriated under Part B of the Education of the Handicapped Act.

(Authority: Sec. 304(d)(2) of the Act; 29 U.S.C. 774(d)(2))

§§ 396.21—396.29 [Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 396.30 What are the selection criteria used to award a grant?

The Secretary uses the weighted criteria in this section to evaluate applications for new awards. The maximum score for all the criteria is 100 points. The maximum possible points for each criterion are indicated in parentheses after the heading for the criterion.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under-represented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To detemine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

CROSS REFERENCE: 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation are appropriate for the project, and to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Technical and programmatic soundness.* (30 points)

(1) The Secretary reviews each application to determine if the approach is technically and programmatically sound.

(2) The Secretary considers—

(i) The proposed project can reasonably be expected to accomplish the purposes of the program, including any priorities established;

(ii) There is a shortage of interpreters in the geographic area to be served by the proposed project;

(iii) The training activities described in the application reflect practices of recognized professional soundness and efficacy or new and innovative activities which may reasonably be expected to result in the training of interpreters who will display a high level of skill;

(iv) There appear to be no substantial obstacles to carrying out the activities described in the application; and

(v) The application demonstrates a logical, coherent and balanced approach to the objectives of the program.

(g) *Specialized capabilities of applicant.* (10 points)

(1) The Secretary reviews each application to determine if the applicant has the capacity for providing training for interpreters for deaf individuals.

(2) The Secretary considers the adequacy of the experience of the applicant organization, in addition to the experience of the staff described under paragraph (b) of this section (Quality of key personnel), in conducting activities which are similar, or have significant relevance, to those proposed in the application.

(h) *Demonstrated relationships with service providers.* (10 points)

(1) The Secretary reviews each application to determine if the proposed interpreter training project was developed in consultation with service providers.

(2) The Secretary considers whether—

(i) The training is appropriate to the needs of deaf individuals and public and private agencies which provide services to deaf individuals in the geographical area to be served by the training project;

(ii) There has been or there will exist a working relationship between the interpreter training project and service providers;

(iii) There are opportunities for the parents of deaf persons and for deaf persons to involve themselves in the training; and

(iv) The training includes a practicum, or field experience, with potential employers of interpreters, if possible.

(Authority: Sec. 304(d) of the Act, 29 U.S.C. 774(d))

§ 396.31 Does the Secretary consider geographical distribution in making grants?

In addition to the selection criteria listed in § 396.30, the Secretary, in making awards under this part, considers the geographical distribution of projects, to the extent possible, where necessary to best carry out the purposes of this program.

(Authority: Sec. 304(d)(1) of the Act; 29 U.S.C. 774(d)(1))

§ 396.32 Does the Secretary give priority to certain existing programs in making grants?

(a) The Secretary, in making awards under this part, gives priority to public or private nonprofit agencies or organizations with existing programs that have demonstrated their capacity for providing interpreter training services.

(b) The Secretary implements this priority by selecting for funding applications from existing programs with demonstrated capacity over applications of comparable merit that do not reflect these characteristics.

(Authority: Sec. 304(d)(1) of the Act; 29 U.S.C. 774(d)(1))

§§ 396.33—396.39 [Reserved]

PARTS 397—399 [RESERVED]

FINDING AIDS

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NOTE 1: The Department of Education Organization Act (Pub. L. 96-88) established the Department of Education (ED) as a new executive department.

On May 9, 1980 (45 FR 30802), the following parts were added to Title 34:

(a) Subtitle A consists of Parts 4, 5, 5b, 6, 7, 8, 10, 11, 12, 15, 17, 30, 35, 50, 63, 64, 67, 73, 74, and 79.

(b) Chapter I consists of Parts 100, 101, 104, and 106.

NOTE 2: On November 21, 1980 (45 FR 77368), various parts appearing in Title 24, Chapter II, and Title 45, Chapters I, XIII, XIV, and XV, were transferred into Title 34 and redesignated. The following table shows the old part numbers as they appear in Title 24 and 45 and the new part numbers as they appear in Title 34.

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Title 34, Government Management was vacated and existing regulations transferred to Title 5, Part 1310, at 44 FR 60286, Oct. 19, 1979.

All sections in former Title 34 of the Code of Federal Regulations which were affected by documents published in the Federal Register since December 7, 1973, are enumerated in the following list. Entries indicate the nature of changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.

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Title established		33769
Chapter II		
Chapter established		33769
200	Added	33769
211	Added	34731
231	Added	35464
232	Added	*2606
232	Appendix B amended	*10132
	Appendix C amended	*10132
251	Added	33770
252	Added	*1582
253	Added	*797
254	Added	*1014
271	Added	34733
281	Added	*8615

1974–1975

(Regulations published from July 1, 1974 through June 30, 1975)

34 CFR

		39 (40†) FR Page
Chapter II		
212	Added	26641
212.4	(c)(5)(ii corrected	27322
	(c)(4) and (5) revised	32559
213	Added	32134
232	Appendix A revised	41250
	Appendix B revised	41251
	Appendix C revised	41251

Note: Asterisk (*) identifies changes published in 1974.

34 CFR—Continued

		39 (40†) FR Page
Chapter II—Continued		
232.4	Revised	†3290
232.5	Revised	†3290
232.8-1	Added	†3290
233	Added	37367
234	Added	†6780
253.6	Revised	24632
255	Added	27133
256	Added	35787
	Appendix O amended	†26031
256.5	(a) revised	†26031
257	Added	42355
282	Added	29355

1975–1976

(Regulations published from July 1, 1975 through June 30, 1976)

34 CFR

		40 (41Δ) FR Page
Chapter II		
232	Appendix C amended	32329
233	Appendix A amended	30263
235	Added	Δ755
236	Added	48346
256	Appendix M amended (Standard Form 424)	54373
256.4	Revised	51038
256.5	(c) and (d) revised	51038

Note: Symbol (†) refers to 1975 page numbers.

Note: Symbol (Δ) refers to 1976 page numbers.

1976–1977

(Regulations published from July 1, 1976 through June 30, 1977)

34 CFR

41 (42*) FR
Page

Chapter I

Chapter established............................*12

Chapter II

Chapter heading revised................52454
200 (Subchapter A) Removed.....52454
211-213 (Subchapter B) Removed..52454
232 Appendix A redesignated and revised as 41 CFR Subpart 101-38.13............................*1477
233 Redesignated as 41 CFR 101-6.100—101.6.112-1 (Subpart 101-6.1) and revised....... *14097
234 Removed.................................52454
235 Heading corrected..................54487
236 Removed.................................52454
251-257 (Subchapter D) Removed..52454

Note: Symbol (*) refers to 1977 page numbers.

1977–1978

(Regulations published from July 1, 1977 through June 30, 1978)

34 CFR

42 (43†) FR
Page

Chapter II

231 Removed.................................40695
232 Removed.................................56121
235 Removed.................................†2722
271 Removed......................35833, 35853
281 Redesignated as 41 CFR 101-36.501—101-36.508 (101-36.5) in part............................ †27190
282 Redesignated as 41 CFR 101-35.201—101-35.210 (101-35.2) in part............................ †27190

1978–1979

(Regulations published from July 1, 1978, through December 31, 1979)

34 CFR

43 (44Δ) FR
Page

Title vacated and reserved.......... Δ60286

Chapter I

Chapter removed and redesignated as 5 CFR Part 1310 (Subchapter B)................................ Δ60286
1 Added... Δ37913

Note: Symbol (†) refers to 1978 page numbers.

Note: Symbol (Δ) refers to 1979 page numbers.

List of CFR Sections Affected Formerly Appearing in Title 45, Public Welfare

At 45 FR 77368, Nov. 21, 1980, various parts appearing in Title 45 Chapters I, XIII, XIV, and XV were transferred into Title 34 and redesignated. All changes in former Chapters I, XIII, XIV, and XV which were made by documents published in the FEDERAL REGISTER from January 1, 1973, through September 30, 1981, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected. 1949-1963, and 1964-1972", published in three separate volumes.

1973

(Regulations published from January 1 through September 30, 1973)

45 CFR

38 FR Page

Chapter I

116.26 Revised....................17127
166 Revised....................16133
170 Revised....................14096
176 Added....................15960
177.2 Revised....................25
177.4 (c)(3)(xiv) added....................1509
(c)(3)(xv) added....................9669
(c)(3)(xvi) added....................20072
177.10 Added....................25
180 Revised....................16065
185 Added....................3452
185.31—185.38 (Subpart D) Added....................10094
185.44 (d)(3) revised....................21646
185.51—185.56 (Subpart F) Added....................10098
185.71—185.76 (Subpart H) Added....................10101
185.81—185.85 (Subpart I) Added....................10103
185.91—185.94 (Subpart J) Added....................10104
185.95 (b)(1) and (3) revised...13563, 21647
186 Added....................18018
187 Added....................19826
189 Added....................27825
190.31—190.39 (Subpart C) Added....................15419
190.41—190.48 (Subpart D) Added....................15421

45 CFR—Continued

38 FR Page

Chapter XV

Establishment of Chapter....................13486
1501 Added....................13486

1973–1974

(Regulations published from October 1, 1973 through September 30, 1974)

45 CFR

38 (39*) FR Page

Chapter I

100a Added....................30662
100a.10 (a)(22) and (24) removed....................*19212
100a.400 Revised....................*19212
100b Added....................30679
100b.10 (1) added....................*19213
100c Added....................30691
101—190 Subchapter B heading added....................30661
101.10—101.13 (Subpart B) Added....................*19212
111.1 (a), (d), and (e) removed.....30658
112.1 (b) and (h) removed....................30659
113.1 (b) and (f) removed....................30659
114.1 (b), (g), and (v) removed.....30659
115.3 (b) and (d) removed....................36059
116.1 (e), (j), (k), (m), (t), (u), (x), (y) and (bb) removed....................30659
116.21 (a), (b), (c), (d), and (e) removed....................30659
116.42 Removed....................30659
116.46 Removed....................30659
116.47 Removed....................30659
116.48 Removed....................30659

NOTE: Asterisk (*) identifies changes published in 1974.

45 CFR—Continued

Chapter I—Continued	38 (39*) FR Page
116.53 (a), (b), (c), and (e) removed	30659
116.54 Removed	30659
116.55 Removed	30659
116.56 Removed	30659
116.57 Removed	30659
119.1 (c), (d), (e), (f), (g), (i), (k), and (l) removed	30659
119.7 Removed	30659
119.8 Introductory test revised	30659
119.21 Removed	30659
119.22 (b) removed	30659
119.23 Removed	30659
119.24 Removed	30659
119.25 Removed	30659
119.26 Removed	30659
119.27 Removed	30659
119.28 Removed	30659
119.40—119.52 (Subpart D) Removed	30659
130.2 Removed	30659
130.3 (b), (d), (f), and (g) removed	30659
130.5 (b)(1) through (6) and (8) through (16) removed	30659
130.22 (c) removed	30659
130.31 Removed	30659
130.32 Removed	30659
130.33 Removed	30659
130.34 Removed	30659
130.35 Removed	30659
130.36 Removed	30659
130.37 Removed	30659
130.38 Removed	30659
130.39 Removed	30659
130.40 Removed	30659
130.41 Removed	30659
130.42 Removed	30659
130.43 Removed	30659
130.44 Removed	30659
130.52 Removed	30659
130.53 Removed	30659
130.55 Removed	30659
131.1 Revised	30659
131.2 (e), (f) and (n) removed	30660
131.6 Removed	30660
131.10 Removed	30660
131.12 Removed	30660
131.13 Removed	30660
131.14 Removed	30660
131.15 Removed	30660
131.16 Removed	30660
131.17 Removed	30660

45 CFR—Continued

Chapter I—Continued	38 (39*) FR Page
132 Revised	*17540
132.1 Revised	30660
132.2 (b), (c), (d), and (e) removed	30660
132.5 Removed	30660
132.6 Removed	30660
132.7 Removed	30660
132.8 Removed	30660
132.9 Removed	30660
132.10 Removed	30660
132.11 Removed	30660
132.12 Removed	30660
132.14 Removed	30660
132.16 Removed	30660
132.17 Removed	30660
132.18 Removed	30660
132.19 Removed	30660
132.20 Removed	30660
132.21 Removed	30660
132.22 Removed	30660
132.23 Removed	30660
132.24 Removed	30660
132.25 Removed	30660
132.26 Removed	30660
132.27 Removed	30660
133 Added	*17546
147.2 (e) and (f) removed	30660
149 Added	*30042
150.1 (f) removed	30660
151 Revised	*22147
151.2 (b), (d), (h), (j), (k), and (n) removed	30660
151.4 Removed	30660
151.5 (b) removed	30660
151.7 Removed	30660
151.8 Removed	30660
151.9 Removed	30660
151.11 Removed	30660
151.13 Removed	30660
151.14 Removed	30660
151.15 Removed	30660
151.16 Removed	30660
151.18 Removed	30660
151.19 Removed	30660
151.20 Removed	30660
151.21 Removed	30660
151.22 Removed	30660
151.23 Removed	30660
151.31 Removed	30660
151.32 Removed	30660
151.33 Removed	30660
151.34 Removed	30660
151.35 Removed	30660
151.36 Removed	30660

NOTE: Asterisk (*) identifies changes published in 1974.

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Chapter I—Continued

		38 (39*) FR Page
151.37	Removed	30660
151.38	Removed	30660
151.39	Removed	30660
151.40	Removed	30660
151.42	Removed	30660
151.43	Removed	30660
151.44	Removed	30660
151.46	Removed	30660
151.47	Removed	30660
154	Added	*14945
155.2	(b), (d), and (g) removed	30660
155.3	Removed	30660
155.7	(c) and (f) removed	30660
155.7	Revised	*19216
155.9	(a) removed	30660
155.11	Removed	30660
155.12	Removed	30660
155.13	Removed	30660
155.14	Removed	30660
158	Revised	*22343
166.2	Removed	30660
166.3	(f), (g), (h), and (k) removed	30660
166.11	(a) revised	*18074
166.16	(a) removed	36060
166.21	(a) removed	30660
166.22	Removed	30660
166.23	Removed	30660
166.24	Removed	30660
166.25	Removed	30660
166.26	Removed	30660
166.27	Removed	30660
166.28	Removed	30660
166.29	Removed	30660
166.30	Removed	30660
166.31	Removed	30660
166.33	Removed	30660
166.34	Removed	30660
166.35	Removed	30660
166.36	Removed	30660
166.43	Removed	30660
166.44	Removed	30660, *17104
166.46	Removed	30660
166.47	Removed	30660
169	Added	*18650
170	Revised	*26724
170.1	(f) and (l) removed	30660
170.2	Removed	30660
170.3	Removed	30660
170.4	Removed	30660
170.5	(b) removed	30660
170.6	(b)(1) and (2) and (c) removed	30660, *17104
170.8	Removed	30660, *17104

45 CFR—Continued

Chapter I—Continued

		38 (39*) FR Page
170.13	(a)(4) removed	30660
170.14	(b) amended	30660
170.18	(a) and (c) removed	30660
170.19	Removed	30660
170.45	Removed	30660
173.1	(b), (d), (e), (g), and (i) removed	30660
173.14	Revised	30660
173.16	Removed	30660
173.23	Removed	30660
173.24	Removed	30660
173.25	Removed	30660
173.26	Removed	30660
173.27	Removed	30660
173.28	Removed	30660
173.29	Removed	30660
173.30	Removed	30660
173.31	Removed	30660
173.32	Removed	30660
173.33	Removed	30660
173.37	Removed	30660
174	Added	*10567
175.2	(d), (h), and (s) removed	30660
175.3a	Revised	*17547
175.15	Removed	30660
175.16	(b) and (c) removed	30660
175.17	Removed	30660
177.1	(d) and (i) removed	30661
177.4	(c)(3)(xvii) added	27935
177.4	(c)(3)(xviii) added	*1849
	(c)(3)(xix) added	*17104
	(c)(3)(xx) added	*25943
178.1	(d) and (i) removed	30661
180.02	(a), (h), and (k) removed	30661
180.03	Removed	30661
180.04	Removed	30661
180.05	Removed	30661
180.06	Removed	30661
180.13	(a) revised	*16886
180.22	(b)(1) revised	*16887
180.23	(a) revised	*16887
180.24	(a) revised	*16887
185.02	(b), (c), (h), (l), and (m) removed	30661
185.03	Revised	30661
185.71	Revised	*13268
185.72	Revised	*13268
185.73	Revised	*13269
185.74	Amended	*13269
185.75	Revised	*13270
185.76	Revised	*13270
185.91	(a) revised	*13270
185.91-1	Added	*17547
185.92	(b)(4) added	*13270

NOTE: Asterisk (*) identifies changes published in 1974.

45 CFR—Continued

38 (39*) FR Page

Chapter I—Continued

185.92-1 Added........ *17548
185.93-1 Added........ *17548
185.94-1 Added........ *17549
185.95 (b)(1) and (3) revised........ *13270
185 Appendix A removed........ 30661
186.2 Amended........ 30661
186.22 Removed........ *22424
186.31—186.34 (Subpart D) Removed........ 30661
186.31—186.33 (Subpart D) Added........ *22424
187.2 Amended........ 30661
187.3 Added........ 30661
187.21 Introductory text revised; (e), (f), (g), (h), (i), and (j) removed........ 30661, *17104
187.31—187.34 (Subpart D) Removed........ 30661
189 Added........ 27825
189 Revised........ *15481
190.31—190.38 (Subpart C) Revised........ *24473
190.41—190.47 (Subpart D) Revised........ *24475
192 Added........ *19213

Chapter XIV

Chapter established........ *15485
1450 (Subchapter B) Added........ *15485

Chapter XV

1501 Revised........ *1593

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(Regulations published from October 1, 1974 through September 30, 1975)

45 CFR

39 (40†) FR Page

Chapter I

100a.10 (a)(33) added........ †21955
101 Heading revised; eff. 10-24-75........ †41795
101.1-101.4 (Subpart A) Heading removed; eff. 10-24-75........ †41795
101.10-101.13 (Subpart B) Removed; eff. 10-24-75........ †41795
112 Revised........ †16013
113 Revised........ †16015
114 Revised........ †16019
115 Revised........ †16032
121a Redesignated from 121.100-121.135 (Subpart B)... †7411
Revised........ †19000

NOTE: Asterisk (*) identifies changes published in 1974.

NOTE: Symbol (†) refers to 1975 page numbers.

45 CFR—Continued

39 (40†) FR Page

Chapter I—Continued

121a.81 Added........ †27459
121b Added........ †7413
121c Added........ †7414
121d Added........ †7416
121e Added........ †7419
121f Added........ †7419
121g Added........ †7422
121h Added........ †7422
121i Added........ †7424
121j Added........ †7428
123.01 (b) revised........ †26516
123.02 Revised........ †26516
123.12 (a)(1) and (d) revised; (h) added........ †26517
123.12-1 Added........ †26518
123.13 (b)(11) and (c) added........ †26518
123.14 (a) and (b) revised; (c), (d), and (e) added........ †26519
123.15 (a) revised........ †26520
123.16 (a) and (c) revised........ †26521
130 Revised........ 41711
130.4 (b)(1)(ii) and (iii) amended; (b)(1)(iv) added........ †25013
130.16 (a)(2) amended........ †25013
130.17 (c) and (d) amended; (e) added........ †25013
130.18a Added........ †25013
130 Appendix A amended........ †25013
131 Revised........ 40495
151.30—151.34 (Subpart C) Added........ †14762
151.40—151.43 (Subpart D) Added........ †20085
151.50—151.55 (Subpart E) Added........ †18552
153 Added; republished and redesignated from Part 60........ †11243
154.6 Revised........ †14918
155.7 Revised........ †14918
158 Revised........ †17713
166 Revised........ †17950
166.4 (b) amended........ †34115
166.6 Amended........ †34115
166.12 (e) amended........ †34115
166.22 (a) (1) and (2) amended........ †34115
166.52 (d)(4) amended........ †34115
166 Appendix C added........ †22230
169 Revised........ †23858
169.28 (a) corrected........ †40518
173 Revised........ †12081
175.14a Added........ 37385
175.17 Added........ †22137
175.18 Added........ †22137
176 Revised........ 37385

45 CFR—Continued

Chapter I—Continued	39 (40†) FR Page
176.1 Corrected	37987
176.4 (b) amended	37987
176.13 Revised	†22138
176.14 Revised	†22139
176.16 (c) corrected	37987
176.20 (e)(3) corrected	37987
176.21 (a) corrected	37987
177.1 (e) and (g) revised; (i) and (r) added	†7593
177.4 (c)(3)(xxi) added	36967
(c)(3)(xxii) added	†2813
(c)(3)(xxiii) added	†18556
(c)(3)(xxiv) added	†30820
177.6 (b) revised	†34115
177.12 (a)(1)(vi) revised	†34115
177.46 (c) and (d) revised; (c-1) added	†7594
177.50 Removed	†7595
177.61—177.66 (Subpart F) Added	†7595
177.71—177.78 (Subpart G) Added	†7597
180 Revised	†25208
182 Added	†20274
184 Added	†21955
185.02 (c) added; (k) and (n) revised	†25173
185.11 (b)(3), (c)(1) and (2), and (d)(1) and (2)(ii) revised; (b)(6) and (c)(4) added	†25173
185.13 (k) introductory text and authority and (1), (2) and (n) revised	†25173
185.14 (a) revised	†25174
185.21 Revised	†25174
185.24 (a) revised	†25174
185.31 (a) authority and (a)(1) and (b) authority and (b)(1) revised; (c) removed	†25175
185.32 (c) removed	†25175
185.33 Revised	†25175
185.34 (c) revised	†25175
185.36 Removed	†25175
185.37 (b)(1) revised	†25175
185.41—185.45 (Subpart E) Heading revised	†25175
185.41 (c)(3) and (d) revised	†25175
185.44 (d)(3) and (g) revised	†25176
185.45 (a)(6), (b), (c)(1), and (a) and (c) authority citations revised	†25176
185.46 Added	†25176
185.51 Revised	†25176
185.53 (c)(2) revised	†25177

45 CFR—Continued

Chapter I—Continued	39 (40†) FR Page
185.54 (a) and (c) revised	†25177
185.55 (a)(2)(iv) and (b)(2)(iii) revised	†25177
185.56 Revised	†25177
185.61 (a) and (d)(1) revised	†25177
185.62 Introductory text and (a), (d), (e), (g), (h), (i), (j) and (k) revised	†25178
185.63 (b) (4), (6), and (7) revised	†25178
185.64 (a), (b)(1)(i), and (b)(3)(iv) revised; (c)(3) removed	†25178
185.65 (b)(3) revised	†25178
185.71—185.77 (Subpart H) Revised	†25178
185.83 Heading, (a) heading and introductory text revised	†25181
185.84 (b) revised	†25181
185.91—185.94-4 (Subpart J) Revised	†25181
185.95 (a) removed; (b) authority and (b)(1) revised	†25186
189 Revised	†23301
190.1—190.5 (Subpart A) Added	39413
190.11—190.16 (Subpart B) Added	39415
190.16 Added	39415
Revised	†15249
190.31—190.39 (Subpart C) Revised	†15249
190.41—190.48 (Subpart D) Revised	†15251
190.51 (Subpart E) Added	39416
190.61—190.66 (Subpart F) Added	39416
190.71—190.86 (Subpart G) Added	41800
192.2 Amended	†17844
192.3 (e) and (f) added	†17844
(e) revised	†27459
192.4 (a) amended; (b) added	†17845
192.5 (b)(3) and (4) amended; (b)(5) through (9) added	†17845
192.9 Revised	†17845
Chapter XIV	
Subchapter A established	38999
1400 Added	38999
1403 Added	39000
1410 Added	39005
1460 Added	†25454
Chapter XV	
1501 Revised	†12266

NOTE: Symbol (†) refers to 1975 page numbers.

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45 CFR

40 (41Δ) FR Page

Chapter I

100a.10 (a)(26) revised.... Δ15691
(a)(31) revised.... Δ16440
(a)(34) added.... Δ16768
(a)(36) revised.... Δ16942
(a)(35) revised.... Δ19638
100b.10 (Subpart A) Revised.... Δ1395
100b.15-100b.36 (Subpart B) Revised.... Δ1395
100b.17 (c)(6) revised.... Δ15691
100c.1 (c-1) added.... 53494
(f-1) added.... Δ15691
100c.2 Revised.... Δ15691
100c.3 Revised.... Δ15691
100d Added.... Δ10437
115.60-115.66 (Subpart G) Added.... Δ26326
116 Revised; eff. 11-13-76.... Δ42903
116a Added; eff. 11-13-76.... Δ42914
121a.5 (b) removed.... Δ35678
121a.10 (g) added.... Δ8608
121a.15 Added.... Δ8608
121a.81 Revised.... Δ11311
121d.50—121d.54 (Subpart C) Added.... Δ33558
121k Added.... Δ24126
123 Added.... Δ23862
130.22 (a) removed; (b) and (c) revised.... Δ1395, Δ36578
133 Appendix A revised.... Δ5393
134 Added.... 53494
148 Added.... Δ10201
154.6 Revised.... Δ19949
155 Revised.... Δ20082
Comment time extended.... Δ34962
157 Added.... Δ20091
159 Added.... Δ20099
162 Added.... Δ21460
166.15 Removed.... Δ1395, 35678
166.61—166.67 (Subpart G) Added.... 49532
173.13 (b) removed.... Δ35678
174.1—174.5 (Subpart A-1) Revised.... Δ15691
174.80—174.88 (Subpart D-1) Redesignated from D and revised.... Δ15692
174.100—174.103 (Subpart D-2) Added.... Δ15693
174.110—174.115 (Subpart D-3) Added.... Δ15694

NOTE: Symbol (Δ) refers to 1976 page numbers.

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40 (41Δ) FR Page

Chapter I—Continued

174.141—174.147 (Subpart D-4) Added.... Δ15695
174.190—174.192 (Subpart F-1) Redesignated from Subpart F and revised.... Δ15695
174.196—174.205 (Subpart F-2) Added.... Δ15696
174.215—174.219 (Subpart F-3) Added.... Δ15697
175 Technical correction.... Δ41914
175 Revised; eff. 10-18-76.... 36882
175.2 (p) corrected.... Δ41914
(v) corrected.... Δ41914
175.17 Revised.... 49271
175.18 (b)(2) corrected.... Δ41914
176 Technical correction.... Δ39324
176.13 Revised.... 49272
Appendix A revised.... Δ18660
176.15 Added.... Δ36321
177 Technical correction.... Δ8975
177.4 (c)(3)(xxv) added.... 50035
(c)(3)(xxvi) added.... Δ4927
(c)(3)(xxvii) revised.... Δ18300
(c)(3)(xxviii) added.... Δ33268
177.42 (d) removed; (e) redesignated as (d).... Δ4500
177.44 (a) through (f) redesignated as (1) through (6); undesignated paragraph redesignated as (a); (b) added.... Δ4500
177.49 (b) revised.... Δ4500
177.52 Added.... Δ4500
180 Revised.... Δ1877
187 Heading and text revised.... Δ16439
190.2 (q) redesignated as (s); (r) redesignated as (t); (e) through (p) redesignated as (f) through (q).... Δ33869
(i) amended; (m) revised; (e) and (r) added.... Δ33869
190.3 (a)(1) removed; (a)(2) through (4) redesignated (a)(1) through (3); (b) revised; Note added.... Δ33869
190.11 Revised.... Δ33869
190.15 Revised.... Δ33870
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